UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/3
8 June 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from non-governmental organizations

CONTENTS

		Page
I.	Introduction	2
II.	Information submitted by non-governmental organizations	2
	A. Anti-Slavery Society	2
	B. Inter-Parliamentary Union	2
	C. The Law Associaton for Asia and the Pacific	4
	D. Native Council of Canada	4

GE.90-12264/3622a

best copy available

I. INTRODUCTION

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. In resolution 1990/62, the Commission on Human Rights requested the Secretary-General to give all necessary assistance to the Working Group in discharging its tasks. In resolution 1989/34, the Sub-Commission had made a similar request.

3. In accordance with these resolutions, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to non-governmental organizations on 2 February 1990.

4. The present document contains replies received up to 23 May 1990 from non-governmental organizations commenting on the first revised text of the draft universal declaration on indigenous rights, as well as their proposals to be taken into account in a second revised text. Additional replies, if any, will be included in addenda to this document.

5. The following non-governmental organizations indicated that they had no comment to make on the text: International Institute of Humanitarian Law.

II. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

A. Anti-Slavery Society

The Anti-Slavery Society would like to offer its warmest congratulations to our Chairman, Mrs. Erica-Irene Daes, and her colleagues, for the sterling work they have done in producing the first revised draft of the universal declaration on indigenous rights.

...

They have done a great service for the 200 million or so indigenous peoples throughout the world and especially for those who are unable to be represented in this Working Group because of a more dominant group's social, economic or racial policies.

B. Inter-Parliamentary Union

The Inter-Parliamentary Union submits, for the consideration of the Chairman/Rapporteur, the resolution adopted by the 81st Inter-Parliamentary Conference on "Contribution to the United Nations efforts to achieve complete decolonization, end racism and apartheid, and promotion of the individual and collective rights of nationalities and ethnic minorities", especially the last part from paragraph 29 to 43, reproduced below. The Inter-Parliamentary

Union wondered whether the idea that indigenous peoples deserve "understanding, tolerance and respect" could be inserted somewhere in the draft and draws the Rapporteur's attention to the idea contained in paragraph 40.

"29. Regrets that certain independent and sovereign countries persist in their flagrant violation of the individual and collective rights of nationalities and ethnic minorities, and appeals to all States immediately to remove any legal or other restrictions which prevent any ethnic or other groups from fully enjoying equal rights as citizens;

30. Calls on States that are not parties to the International Covenants on human rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid, to ratify or accede to them;

31. Invites the Governments of the States signatories to the International Convention on the Elimination of All Forms of Racial Discrimination to promote the adoption of legislative, juridical and other measures to give full effect to its provisions;

32. Also invites States to take steps to abolish all juridical and other restrictions that prevent ethnic or other population groups from enjoying the same rights as all citizens;

33. Expresses its conviction that the diversity of cultural particularities is as enriching as the diversity of nature which constitutes mankind's common heritage;

34. Resolutely supports the fundamental human right of all human beings, peoples, cultures or religious communities to safeguard their own identity;

35. Calls on all States to ensure that persons belonging to national minorities can disseminate, have access to, and exchange information in their mother tongue;

36. Calls on all States to ensure that persons belonging to national minorities can maintain and develop their own culture in all its aspects, including language, literature and religion, and that they can preserve their cultural and historical monuments and objects;

37. Calls on all States to ensure that persons belonging to national minorities can give and receive instruction in their own culture, including instruction through parental transmission of language, religion and cultural identity to their children;

38. Calls on all States to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities in their territory, including respect for the free exercise of rights by persons belonging to such minorities and assurance of their full equality with others;

39. Calls on all States to take appropriate measures to combat intolerance and to encourage understanding, tolerance and respect for national minorities;

40. Notes that in certain cases, the setting up of federalist structures can be the appropriate way of solving conflicts without recourse to force when these conflicts are ethnic or religious or linked to the problems of minorities, of allowing different population groups to live together in peace within the same State entity, and of checking secessionist tendencies.

41. Calls on all States to support the efforts of the United Nations Commission on Human Rights to draft a declaration on the rights of persons belonging to minorities;

42. Encourages Parliaments to draft and adopt the necessary legislation to guarantee the legitimate rights of minorities in their territories, in accordance with the requirements of the international agreements in this field;

43. Calls on all States to support the development of a strategy within their own countries to give substance, in a well-planned system, to all previous recommendations concerning national minorities."

C. The Law Association for Asia and the Pacific

The Law Association for Asia and the Pacific would like to inform the Working Group that the LAWASIA Human Rights Standing Committee will be publishing a report on indigenous populations in the Asia-Pacific region and will forward a copy of the report to the secretariat of the Working Group for consultation by participants in the Working Group.

D. Native Council of Canada

General remarks

Overall, the Working Group, and in particular Mrs. Erica-Irene Daes, is to be applauded for its careful and sympathetic efforts in drafting the declaration, and the Sub-Commission's adoption of the first draft is a solid step towards the completion of a truly important and balanced standard. The Native Council of Canada (NCC) fully understands the necessity for the declaration to reach indigenous peoples and conditions globally. In this respect, we urge that the situation of indigenous peoples without a currently respected or protected land base must form an essential element of the declaration. Consequently we wish to impress upon the Sub-Commission and the Working Group the need for more specific protections in regard to indigenous community control and jurisdiction over areas that need not be and should not be tied to ownership of a defined land base. We note therefore that the draft declaration should include provisions respecting the following:

(a) The right of indigenous peoples to have authority for the care and control of children, and other facets of family relations. (The loss of control over children, especially through State-facilitated apprehension and

adoptions abroad or to non-indigenous families, is perhaps the most universally-felt deprivation of indigenous peoples, as reflected for example in the Darwin Declaration);

(b) The right to their own justice systems;

(c) The right to recognition of their laws in State and international courts;

(d) The obligation of States to negotiate treaties as a general one, including on matters beyond the loss of lands.

Specific comments

Preamble:

1. Comments on the Preamble are difficult to make until the second draft of the declaration is available, particularly since important issues relating to self-determination and the general obligation of States to obtain the consent of indigenous peoples prior to taking actions must still be dealt with in the body of the document and accommodations will inevitably find reflection in the Preamble.

2. The status of the Preamble could be upgraded in a provision in the declaration itself indicating that the latter is to be interpreted consistent with the principles set out in the Preamble. If this were to be done, then greater care will have to be taken in ensuring that the three key issues of "consent", "land ownership and jurisdiction" and "political/juridical rights" are well reflected in the Preamble. Essentially, the NCC feels that the declaration must be clear in asserting the right of indigenous peoples to be considered subjects of international law, and as a result clear interpretative guidelines should be presented to the courts, both international and domestic.

3. The final clause of the Preamble should definitely be amended to strengthen the obligation of States to obtain the consent and co-operation of indigenous peoples in implementing the declaration, "implement in conjunction with" can mean just about anything and need not imply support or co-operation.

Part II:

3. The NCC strongly supports this wording. The inclusion of the bracketed adjectives would seem to be a matter of style only, as the collective aspect of the first right and the individual aspect of the second group of rights appears unmistakable.

4. We would suggest that the Working Group consider using the phrase "protect and promote" instead of "maintain and develop", if only because the former seems to imply a stronger capacity to actively defend rights under attack. With regard to the second part of the provison, we would suggest the words "to call themselves and be known by their proper names".

READEX FICHE

6. Changing the word "pursue" to "promote" would be a valuable improvement.

9. There appears to be missing words in this provision. Presumably this would be "including any literary languages". In addition, it would seem necessary to add in "educational" in the list of purposes.

Part III:

12. The following re-draft would be an improvement:

"The right of collective and individual jurisdiction, ownership, possession and use of the territories, lands or resources which they have traditionally occupied or used. Such territories, lands or resources may only be alienated from them with their free and informed consent as witnessed by a treaty or agreement with the concerned indigenous peoples."

14. Presumably the phrase "substance of" is meant to refer to or include "sub-surface". In addition, it is the intent by using the term "ice sea" to mean more than "sea ice" (e.g., sea ice and permanently iced sea)? If so, then perhaps, after consultation with the Sami and Inuit, it might be appropriate to indicate both.

15. For great certainty, the term "formerly" should be inserted after the phrase "The right to reclaim land and surface resources". Otherwise currently owned or held lands and resources could be taken with compensation but without consent, in contradiction to paragraph 18. In addition, the term "surface" should be deleted, leaving the broader phrasing in paragraph 14 (as amended by our suggestions above) to give the interpretation of scope.

16. This paragraph needs work to strengthen it. We would suggest the following addition to the last sentence: "Where such consent is given, there is a right to just and fair ...".

17. This new clause lacks consistency with the protection from forced alienation found in the earlier provisions. The key question is whether the object of the clause is projects on non-aboriginal lands or on aboriginal lands. If the latter, then the clause would seem to undermine completely the earlier protections, particularly as the phrase "free and informed consent" is absent, replaced by the much weaker "consult with".

Part IV:

18. With the exception of the last sentence, this clause is a crucial one that we support absolutely. The second to last sentence is the most important one, yet as drafted it is undercut entirely by the last sentence. We strongly urge that the reference to compensation be firmly and exclusively tied to past deprivations only, and not appear to allow future acts of deprivation.

20. It is not clear from this clause what the distinction is between "the right to determine, plan and implement" and the right to do so, "as far as possible ... through their own institutions". There may be a concern with the capacity of indigenous peoples to actually implement programmes and a desire to avoid States simply refusing to fund any programmes that cannot be effectively implemented by indigenous institutions. If so, clauses 7 and 19 should be enhanced by stressing the positive obligation on States to provide resources. We think that clause 20 is best left as a statement of right without qualification.

Part V:

21. We are concerned with the phrase "specific character duly reflected in the legal system". First, we believe the term "specific" is not helpful, and that the term "distinct" is more appropriate in light of the Preamble and other clauses. Secondly, we think it important to require that indigenous institutions be "recognized and made effective" in the legal system, not merely "reflected in".

22. This right is crucial as it speaks to the need for collective or corporate representation of indigenous peoples as indigenous peoples, not merely as citizens in common with non-indigenous persons. Therefore is is necessary to alter the phrase "through representatives chosen by themselves" to "through representative chosen by themselves as indigenous peoples".

23. This clause is one of the most important in that for the first time the distinctive right of indigenous self-determination is being addressed. We would prefer that the term "self-determination" be directly used, rather than introducing a new and untested term such as "autonomy". We believe that the preambular clause regarding the right to self-determination is sufficient to both distinguish the two uses of the term and protect indigenous peoples' rights to self-determination in matters beyond those specifically itemized in clause 23.

26. We are not sure of the precise intent of this clause. One of the issues our constituents face is the recognition by States of the legal status of customary marriages, adoptions and intra-tribal migrations across State boundaries, as well as recognizing or extending any existing statutory entitlements to persons who have been adopted, married in or migrated across such boundaries. We would appreciate this facet being directly dealt with. We are not sure of the meaning of "kith and kin", and would prefer a wording along the lines of:

> "their own <u>members notwithstanding</u> State boundaries and the obligation of the State(<u>s</u>) concerned to adopt measures, <u>with the consent of the peoples concerned, to facilitate and recognize the consequences of</u> such contacts."

27. This clause is problematic as the right to merely "claim" does not carry with it any right of remedy or specify any forum for determining a breach of the right. We would strongly recommend the following reformulation:

> "The right to insist that States honour treaties and other agreements concluded with indigenous peoples, and the right to challenge and seek remedy of non-adherence to treaties and agreements before international juridical institutions."

We would note that clauses 27 and 28 need to be read together, however, it would seem that the procedures for dealing with "disputes" in the latter clause do not include explicitly juridical mechanisms at the international level, whereas the violation of treaties and similar agreements require such a vehicle if the standard of protection is to be truly international for these unique arrangements.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/3/Add.1
9 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990
Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from non-governmental organizations

Addendum

The present document contains information submitted by the Indian Law Resource Center and the National Indian Youth Council.

GE.90-12399/3862a

THE INDIAN LAW RESOURCE CENTER

1. The draft universal declaration on indigenous rights contained in document E/CN.4/Sub.2/1989/36 of 25 August 1989 prepared by the Chairman of the Working Group on Indigenous Populations, Madame Erica-Irene A. Daes, is another encouraging and productive step forward in the process of elaborating a declaration which can be adopted eventually by the General Assembly of the United Nations. The draft universal declaration incorporates, in general, the concerns and proposals that have been set forth over the years by indigenous representatives, non-governmental organizations, Governments and human rights experts. We reiterate our support for the decision to prepare a declaration of rights rather than a more general declaration of principles.

2. We also support and commend the decision to declare explicitly certain rights as collective rights or rights of collectivities as well as to declare rights which belong to individuals. It is in the area of collective rights that the declaration will make its greatest contribution, but individual rights of indigenous persons are equally important.

3. In our view, it is best to declare universal rights for indigenous peoples in broad, ringing and enduring terms. More specific and detailed provisions for implementing, protecting and enforcing these rights is the proper function of a covenant or convention on indigenous rights.

4. On the other hand, we must be aware that the text of the draft should cover all important items before it is finalized and submitted to the Sub-Commission, the Commission on Human Rights, Economic and Social Council and the General Assembly. In the process to come, we must expect that the text is more likely to suffer from subtraction and that further additions to the text will be unlikely. Therefore, a comprehensive declaration of standards should be prepared. Specific recommendations concerning the draft universal declaration follow.

5. We recommend adding an additional preambular paragraph to introduce the principle of the "right to be left alone". The additional paragraph would be as follows, "Believing that States and others should respect the desire and needs of those indigenous peoples who wish to be left alone,".

6. Preambular paragraph 9 states "that indigenous peoples would be free to manage their own affairs to the greatest possible extent." We would suggest removing the phrase, "to the greatest possible extent". In our view this phrase adds no significant meaning to the statement and could serve to negate or qualify the right in question without any particular reason. It unnecessarily limits the statement.

7. Preambular paragraph 10 contains the sole reference to the right to self-determination. The right to self-determination of indigenous peoples should also be set forth in the substantive part of the declaration, perhaps in article 23. It should be made clear that the right to self-determination has only one meaning under international law, for indigenous and non-indigenous peoples alike. (See para. 10 below, for further discussion concerning self-determination).

8. Among indigenous peoples the right to the return of human remains now held in museums and other repositories is of overriding and immediate concern on religious and humanitarian grounds. We recommend that the right to the return of human remains be added to draft article 8 by changing the final period to a comma and adding the following language, "and the right to the return of human remains." We would note that there are virtually no cases in which a proper and scientific reason can be adduced for failing to return human remains for proper burial. We feel it would be unnecessary to carve out any exceptions in regard to this right. The use of the word "return" clearly implies that human remains are to be returned to present day indigenous people who have an established prior connection to the human remains in question.

9. In regard to part III relating to resources, we feel that the declaration must clearly establish the right of indigenous peoples to both surface and subsurface resources pertaining to their lands and territories. We cannot understand or accept the propositon that States should acquire the right to and ownership of those oil, coal and similar resources which originally belonged to indigenous people, merely by the fact of settlement of a particular country. The declaration should provide that indigenous peoples have a veto power over any development of the surface or subsurface resources proposed or inititated by the State or by private companies. Requirements of consultation and compensation, as set forth in draft article 17, are not sufficient protections. The consent of indigenous peoples must be required before resource and other exploration are undertaken on indigenous lands and territories. Indigenous peoples must, in addition, have the right to develop those resources themselves for their own benefit without the approval or consent of the State. We feel that the moral and appropriate approach is to recognize that indigenous people continue to own all of the resources pertaining to their land and waters.

10. In regard to draft article 23, we feel that the concept of self-determination is of such great, overriding importance that it should be observed and declared in this declaration. We suggest the following revised language for draft article 23: "The right to self-determination, including at minimum the collective right to autonomy in matters relating to their own affairs, including education, information, culture, religion, health, housing, social welfare, civil and criminal jurisdiction, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions." This language would somewhat clarify and enhance the meaning of the term "autonomy" in regard to the indigenous peoples' right to exercise ordinary governmental functions within their territories. In the version we propose, the matters to be included in the term "autonomy" are not limited to internal and local affairs but include all affairs of the indigenous people.

11. It is essential that this declaration be understood to be a universal declaration of standards which will apply to all indigenous peoples regardless of their specific characteristics and circumstances. Certain indigenous peoples may have additional and more extensive rights according to their particular characteristics and circumstances, including their particular history, their location, their economies and many other practical factors such as population, land base and political organization. Indigenous peoples under these circumstances may have, and legally should be recognized as having additional rights, particularly the right of self-determination and economic rights which go beyond the minimum standards of the universal declaration.

12. The right of indigenous peoples to self-determination is equal to the right of non-indigenous peoples to self-determination. We should resist efforts to re-define or to dilute for indigenous peoples a right that has already been recognized for all others. The declaration must carefully avoid establishing a category of second-class rights for indigenous peoples.

13. Politically and practically, we think that it will be important for the acceptance of the draft declaration on the part of indigenous peoples that there be as much latitude as possible for indigenous peooples to argue for and develop rights going beyond the declaration. This will help to overcome criticism on the part of indigenous groups who feel that the declaration does not go far enough to meet their particular needs and circumstances, or that it establishes a limitation or barrier against fulfillment of their fundamental rights.

14. In regard to draft article 26, we recommend a redrafting which will clarify the intended rights while remaining within the same basic scope. The recommended new text would be: "The right to travel freely and to maintain contact and co-operation, including cultural and social exchanges and trade, with indigenous people across State boundaries." We feel that transnational contacts need not be limited to merely traditional contacts and that it should be clear that travel back and forth across the borders is essential. Such free crossing and re-crossing of borders has been recognized by treaties, for example, in a treaty between the United States and Great Britain regarding the border between the United States and Canada. Changing the term "kith and kin" to "indigenous people" would clarify the meaning and also avoid unnecessarily limiting the contacts to one's own family or immediate relations.

Conclusion

15. We hope that these comments and recommendations be received as constructive contributions. We welcome questions and criticisms, and we look forward to further discussion and analysis of the draft universal declaration on the rights of indigenous peoples.

THE NATIONAL INDIAN YOUTH COUNCIL

1. The National Indian Youth Council (NIYC) is encouraged by the progress in the drafting of a universal declaration on the rights of indigenous peoples for adoption by the United Nations General Assembly. The first revised text of the draft declaration, contained in document E/CN.4/Sub.2/1989/36 is a further productive step towards globally operative standards to uphold the survival of indigenous communities.

2. NIYC's comments are directed at supporting a critical conceptual aspect of the draft declaration: the emphasis on the collective or group nature of indigenous rights. The following discussion in this respect is from a paper by Professor Robert Clinton of the University of Iowa College of Law presented at a workshop on the draft declaration held at the Iowa College of Law on 19 March 1990. The following excerpts from Professor Clinton's paper, "The Rights of Indigenous Peoples as Collective Group Rights" have been adopted by NIYC for use here with his permission.

3. To American and many western observers ... notions of group or collective rights do not sit well with Euro-American notions of liberty and individual freedom. Tensions between Native Americans and other indigenous and tribal peoples and western commentators on the legitimacy of affording protection to such group rights of autonomy emerge, ... from an important difference in perspective about the jurisprudential origins of notion of human rights and liberty.

Human rights and the State: a difference in perspective

4. Many American and European notions of liberty and of the relation of individuals and the State emerged from secular natural law jurisprudence which flourished in Europe during the seventeenth, eighteenth, and early nineteenth centuries. These notions have significantly influenced not only western legal development, but, through colonialism and other processes of western legal penetration, the legal institutions and conceptions of many non-western States as well. In the natural law tradition, all organized society, including the State, represents a compact among the people by which the people delegate some of their sovereign prerogatives and autonomy to the State in exchange for the peace, security, and personal well-being established by the organized society. Thus, conceptually, western thought imagines that the individual antedates the State. Under this view, the individual could exist in a state of nature divorced from organized society, an idea ultimately reflecting Biblical creation stories of the Garden of Eden and which clearly was heightened by Eurocentric perceptions that emerged from contact with North American Indian tribes, whom their early Euro-American "discovers" wrongly believed were in a disorganized state of nature unshackled by the fetters of organized governments or society. Since western thought begins with the isolated individual separated from organized society, it therefore focuses extensively on questions centering on the relationship of the individual to the State. Rights are thought of as limitations on organized society and government, areas of personal autonomy and prerogative not delegated by the social compact to the sovereign. ... [T]he basic and most dominant western themes about rights pit the individual <u>against</u> the State and presume that the individual rights emerge from the limited nature of the social compact and the restraints imposed by notions of popular consent. Indeed, western legal

thought remains formed primarily by social compact theories of the relationship of the individual and the State. This conception, of course, leaves little room for other group affiliations or group, collective, or societal rights - a problem that sometimes leads to absurd results or absolute injustices. ...

5. [Indigenous peoples] and many non-westerners often have a very different view of the nature of their rights and legal relationships. Deriving their legal vision from their tribal associations, tribal traditions, and the natural ecology with which they often seem more familiar than many western political philosophers, native peoples see humans as inherently social beings. As social beings, people never exist isolated from others in some mythic, disorganized state of nature. Rather human beings are born into a closely linked and integrated network of family, kinship, social and political relations. One's clan, kinship and family identities are part of one's personal identity and one's rights and responsibilities exist only within the framework of this familial and social network. Non-western thinkers therefore naturally think of their rights as part of a group. Certain rights exist within each social group and other rights and responsibilities are attendant to their relations with members of other groups within the web of associations that forms the tribe or the State. For them, the tribe or State is merely composed of interlinked group associations and affiliations. ... Thus, the right an individual has to autonomy is not a right against organized society, as it is western thought, but a right one has because of one's membership in the family, kinship and associational webs of the society. To [indigenous peoples], many other non-westerners, and some western thinkers interested in the ideas of community and fraternity, then, group and individual rights are not antithetical concepts, they are complementary concepts. Group rights go hand in hand with group membership and, indeed, individual rights are unthinkable except in contempaltion of the relationship of those rights to the larger political group. ...

6. In this respect, the debate over individual versus group rights, which one often hears whenever the rights of native and indigenous peoples are raised, really represents ... a clash over views about the nature of organized society. The debate is really over whether Eurocentric definitions of government and rights should be adopted in preference to a broader, more inclusive and [arguably] more social and communitarian, conception of society and the rights, roles, and relations held by individuals and groups within society. Indeed, ... if western legal thinkers would listen respectfully to the claims for group protection of culture, autonomy, religious freedom, rather than attacking such notions from their own jurisprudential perspective, a much richer conception of human rights and the relation of the individual to society might emerge.

Group rights in western legal traditions

7. While the dominant themes in western legal thought cannot easily be accommodated with notions of group rights, that has not stopped western legal traditions from recognizing separate legal protections for various groups and for their members as members of those groups. Such features not infrequently have been found in the governance of culturally pluralistic western communities. The pluralistic origins of such group protection might derive from the existence of significant numbers of indigenous peoples, such as the New Zealand constitutional assurance of fixed number of Parliamentary seats

assigned to the Maoris, or it might derive from pluralistic linguistic or cultural traditions within the nation state, such as canton protection of national and linguistic groups that comprise the nation of Switzerland or the more recent protection of bilingualism and culturally appropriate educational facilities that have emerged to recognize the group aspirations of the Francophone communities in Canada. In each of these cases, and many others, western legal traditions have developed special legal protections that can best be explained as group rights, but which are often advanced, like the right to free exercise of religions, as if they were individual rights. The concern with preserving French and French culture in Quebec and Canada, for example, does not constitute a separate individual guarantee to all Canadians of their individual right to speak and learn in either English or French; it is, rather, an effort to assure the Francophone community, as a group, of their rights to linguistic, educational, and cultural autonomy. One cannot easily exercise one's individual right to speak French if there are no other French speakers around with whom to converse. The right is a group, collective, or societal right of the French community. ...

8. Indian tribes and other indigenous peoples also have legitimate claims to group rights. In the United States, for example, the tribes of the south eastern states ceded large portions of their land in exchange for explicit treaty promises made under the solemn authority of the United States that they could remove to an area outside of state or federal governance and once there exclusively govern themselves under their laws, rather than being included in any [U.S.] state or federal territory. The United States broke these express treaty promises at the turn of the century when the state of Oklahoma, which included the former Indian territory to which these tribes had removed seventy years before, was admitted to the United States as a pluralistic, non-Indian state. Similarly, most tribes agreed to cede lands, end hostilities, or otherwise remove to those Indian islands that we call Indian reservations based on explicit or implicit guarantees that these islands would provide group sanctuary where the tribes could continue some of their culture, way of life, and political autonomy free from the dominant colonial society which rapidly was encroaching on and eroding important components of that culture, such as the decimation of the buffalo herds during the late nineteenth century upon which many of the American plains tribes depended. All of these rights involved demands by Indian for and cessions by the United States of rights of group autonomy, not individual freedoms. ...

9. While other nations containing indigenous peoples had different historical experiences, many of the vestigial problems created by colonialism have common roots and common themes. Expropriation of the land and resources of indigenous peoples for the benefit of the dominant colonial society recurs in most sagas of colonial contact between indigenous populations and the colonial power. Collective internment sometimes was practised. Actual genocide or cultural genocide, which the draft universal declaration creatively labels ethnocide, was not uncommon, emerging from western notions of the nation-state and efforts to create the cultural homogeneity that it required either through forced assimilation or extermination. In short, western colonial societies regularly reacted to Indians and other indigenous peoples because of their group affiliations and dealt with such groups, as groups, to accomplish western interests. It is truly ironic that when

indigenous peoples demand vindication of those group rights, sometimes only the very same rights western Governments promised in treaties or agreements with the affected indigenous groups, western legal theory now questions the validity or existence of such group rights claims.

10. Unlike [certain other group] rights, however, tribal group rights, the rights of indigenous peoples, generally find few, if any, structural protection in the political structures of the nations in which such indigenous populations are found. While many Indian tribes and other indigenous peoples were promised such structural protection, such as the promises of potential statehood made in 1778 by the United States to the Delaware and the later abortive discussions of statehood or other organized legal protection for the Indian tribes of the Indian territory in the United States, very few of these promises ever reach fruition. Indeed, the New Zealand legal guarantee of two Maori seats in the New Zealand Parliament is the only major structural assurance of representation in the dominant society ... and that guarantee not only constitutes far less than a voting majority but also was originally intended to diminish the voting power of Maori who otherwise might have been entitled to larger numbers of representatives based on their then existing percentage of the population.

11. Since indigenous peoples have no structural political guarantees that the nation in which they find themselves located will respect their group rights to land, culture, religion and political autonomy, special legal protection that limits the power of the State is critically important. Some such protection might emerge from domestic constitutional or other limitations on the exercise of national power. Since majorities, however, rarely vote to limit their political autonomy in favour of indigenous, sometimes disenfranchised, minorities, international protection of such group rights also is terribly important. ... The political processes do not work for [indigenous peoples] and resort to legal protection, such as the group rights of the universal declaration of indigenous rights, is critical if their legitimate group rights claims are to be protected in any form from national encroachment.

Conclusion

12. Thus, the draft universal declaration of indigenous rights should be seen as a constructive challenge to nations organized on western models of sovereignty. It constructively challenges the jurisprudential assumptions upon which many base their conceptions of rights and the relation of individuals to States. It requires them to reconsider such notions and to take broader account of communitarian values and group identifications and associations. It also challenges them to honour legitimate claims to autonomy, separate development, and self-determination made by indigenous peoples, some of which in fact were acceded to and promised by western colonial Governments in now forgotten treaties and agreements in the distant mists of the historical saga of colonial contact between indigenous peoples and the dominant colonial society. Finally, and most important, the universal declaration challenges nations containing indigenous populations to satisfy an emergent international set of minimum standards of human decency that many indigenous populations would recognize as simply the result of respectful behaviour between various groups in a larger society. The peoples whom

Euro-Americans discovered and considered savages in a state of nature had certain insights into social and human organization which western societies are only beginning to understand. In so far as the draft universal declaration of indigenous rights provides long overdue legal protections for the group rights of indigenous peoples, the Convention affords the basis for emergence of a broader dialogue on such questions between nations and their indigenous [populations]. Perhaps after almost 500 years of colonial contact, Euro-American and other nations modelled on western legal traditions finally may understand the flaw in western political thought about which indigenous peoples have been complaining for so long. Group rights are every bit as important to human dignity and well being as individual rights.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/3/Add.2
18 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
13 July-3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from non-governmental organizations

Addendum

The present document contains information received from the Indian Law Resource Center, dated 22 June 1990.

GE.90-12450/3958a

As the Working Group on Indigenous Populations intensifies its efforts to prepare a final draft of the Universal Declaration on the Rights of Indigenous Peoples, we respectfully call attention to the importance of maintaining the highest principles in the process of developing new standards of human rights. Some participants have suggested that indigenous representatives are making proposals and demands that are not appropriate because they are not politically achievable at this time. There has also been a suggestion that indigenous representatives should negotiate and compromise in order to facilitate and accelerate the preparation of a declaration that could soon be approved by the Member States of the United Nations.

We believe that these suggestions are inappropriate, if they mean that fundamental principles of human rights should be tailored to meet political expediencies. Human rights principles must always stand above political considerations. Human rights standards and human rights terminology should not be modified or diluted to satisfy concerns about political expediency. A declaration on indigenous rights that fails to carry forward the highest human rights standards would be a bad precedent that would burden indigenous peoples for generations and would embarrass those who have sought human rights protections for indigenous peoples.

It would be far better to continue the process of education, debate and study than to endorse any declaration that has been watered down by political considerations. Our goal is the adoption of the strongest and most reasonable declaration that can be achieved. In doing this we need not agree to nor endorse provisions that do not properly protect indigenous human rights.

We strongly encourage vigorous and reasoned discussion of standards and proposed language for a declaration that would advance the cause of human rights for indigenous peoples and all peoples. To encourage that discussion, we are circulating the comments on the draft declaration that were submitted at the 1989 session of the Working Group by the Indigenous Peoples' Preparatory Meeting. Some of the points that our Centre made earlier in regard to the draft declaration are set forth again in a separate memorandum, which is also attached.

Respectfully submitted,
Robert T. Coulter

INDIGENOUS PEOPLES' PREPARATORY MEETING

Comments on the First Revised Text of the Draft Declaration
on Rights of Indigenous Peoples
July 1989

The Indigenous Peoples' Preparatory Meeting held at the Palais des Nations from 24 to 28 July 1989, has agreed upon the following comments concerning the first revised text of the Draft Universal Declaration on Rights of Indigenous Peoples.

1. The concept of Indigenous peoples' collective rights is of paramount importance. It is the establishment of rights of peoples as groups, and not merely the recognition of individual rights, which is one of the most important purposes of this Declaration. Without this, the Declaration cannot adequately protect our most basic interests. This must not be compromised.

2. The right of consent to actions which affect our fundamental interests is also essential. Specifically, the revision of article 17 of the Declaration has removed the requirement of consent with regard to large-scale projects, particularly ones involving exploitation of natural resources. It is these very projects which most frequently involve the theft of our resources and bring about the destruction, degradation and even the outright killing of Indigenous peoples. It is in this precise area where Indigenous peoples must be accorded real rights or else face continuing destruction and even genocide. Yet on this point the revised text has fatally weakened the right of Indigenous peoples to protect themselves, by taking out the requirement of consent.

3. The right of Indigenous peoples to the return of human remains is a matter of great importance which must be added to the Declaration. The unjustifiable retention of Indigenous human remains by museums and other institutions is truly shocking and discriminatory. The return of these remains is a matter of common decency.

4. The Declaration must include clear language to protect Indigenous peoples' ownership and control of subsurface resources. The text is now unclear. Indigenous peoples have an ancestral right under our own traditional legal systems to the subsurface resources in the same manner as the surface of the land.

5. The Declaration must stress the duty of the nations to honour and respect the spirit and intent of treaties signed, or which will be signed, with Indigenous peoples. The revised language must contain a recognition of the true status of Indigenous treaties.

6. The right to self-determination must be reaffirmed in the Declaration. A recent United Nations seminar of experts concluded:

> The principle of self-determination as set forth in the Charter of the United Nations and in article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights is essential to the enjoyment of all human rights by indigenous peoples.

Language is needed in the Declaration which acknowledges the right and power of indigenous peoples to exercise jurisdiction within their territories.

7. The provisions on lands and territories must be strengthened, particularly by making article 12 refer to both lands and territories. Further, the protections of articles 12 and 14 must apply to all lands to which Indigenous peoples are justly entitled even though these lands may not have been "traditionally occupied" in the strict sense of those words. Likewise, when lands or resources have been taken away without their consent, or where Indigenous peoples agree to yield land or resources, States must provide indemnity in the form of equivalent land, revenue sharing or in any form acceptable to the Indigenous people concerned.

8. Finally, we believe that the Declaration should acknowledge a particularly fundamental idea cherished by many Indigenous peoples, the right of non-interference. The right of non-interference is at the foundation of many of the other provisions of the Declaration and expresses a natural and fundamental aspiration of many Indigenous peoples.

[These comments were signed by 22 indigenous representatives and organizations.]

Recommendations concerning the August 1989 Draft Universal Declaration on the Rights of Indigenous People
21 June 1990

The Draft Universal Declaration on Indigenous Rights contained in document E/CN.4/Sub.2/1989/36 (25 August 1989) prepared by the Chairman of the Working Group on Indigenous Populations, Madame Erica-Irene A. Daes, is another encouraging and productive step forward in the process of elaborating a declaration which can be adopted eventually by the General Assembly of the United Nations. The Draft Universal Declaration incorporates, in general, the concerns and proposals that have been set forth over the years by indigenous representatives, non-governmental organizations, governments and human rights experts.

We reiterate our support for the decision to prepare a declaration of rights rather than a more general declaration of principles.

We also support and commend the decision to declare explicitly certain rights as collective rights or rights of collectivities as well as to declare rights which belong to individuals. It is in the area of collective rights that the declaration will make its greatest contribution, but individual rights of indigenous persons are equally important.

In our view, it is best to declare universal rights for indigenous peoples in broad, ringing and enduring terms. More specific and detailed provisions for implementing, protecting and enforcing these rights is the proper function of a covenant or convention on indigenous rights.

On the other hand, we must be aware that the text of the draft should cover all important items before it is finalized and submitted to the Sub-Commission, the Commission on Human Rights, ECOSOC and the General Assembly. In the process to come, we must expect that the text is more likely to suffer from subtraction and that further additions to the text will be unlikely. Therefore, a comprehensive declaration of standards should be prepared.

The following are specific recommendations concerning the Draft Universal Declaration of 25 August 1989:

1. We recommend adding an additional preambular paragraph to introduce the principle of the "right to be left alone". The additional paragraph would be as follows, "Believing that states and others should respect the desire and needs of those indigenous peoples who wish to be left alone,".

2. Preambular paragraph 9 states "that indigenous peoples would be free to manage their own affairs to the greatest possible extent". We would suggest removing the phrase, "to the greatest possible extent". In our view this phrase adds no significant meaning to the statement and could serve to negative or qualify the right in question without any particular reason. It unnecessarily limits the statement.

3. Preambular paragraph 10 contains the sole reference to the right to self-determination. The right to self-determination of indigenous peoples should also be set forth in the substantive part of the declaration, perhaps in item 23. It should be made clear that the right to self-determination has

only one meaning under international law, for indigenous and non-indigenous peoples alike. (See section 6, below, for further discussion concerning self-determination).

4. Among indigenous peoples the right to the return of human remains now held in museums and other repositories is of overriding and immediate concern on religious and humanitarian grounds. We recommend that the right to the return of human remains be added to paragraph 8 by changing the final period to a comma and adding the following language, "and the right to the return of human remains." We would note that there are virtually no cases in which a proper and scientific reason can be adduced for failing to return human remains for proper burial. We feel it would be unnecessary to carve out any exceptions in regard to this right. The use of the word "return" clearly implies that human remains are to be returned to present day indigenous people who have an established prior connection to the human remains in question.

5. In regard to part III relating to resources, we feel that the declaration must clearly establish the right of indigenous peoples to both surface and subsurface resources pertaining to their lands and territories. We cannot understand or accept the proposition that States should acquire the right to and ownership of those oil, coal and similar resources which originally belonged to indigenous peoples, merely by the fact of settlement of a particular country. The declaration should provide that indigenous peoples have a veto power over any development of the surface or subsurface resources proposed or initiated by the State or by private companies. Requirements of consultation and compensation, as set forth in item 17, are not sufficient protections. Consent of the indigenous peoples must be required before resource exploration and exploration are undertaken on indigenous lands and territories. Indigenous peoples must, in addition, have the right to develop those resources themselves for their own benefit without the approval or consent of the State. We feel that the moral and appropriate approach is to recognize that indigenous people continue to own all of the resources pertaining to their land and waters.

6. In regard to item 23, we feel that the concept of self-determination is of such great over-riding importance that it should be observed and declared in this declaration. We suggest the following revised language for item 23: "The right to self-determination, including at minimum the collective right to autonomy in matters relating to their own affairs, including education, information, culture, religion, health, housing, social welfare, civil and criminal jurisdiction, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions." This language would somewhat clarify and enhance the meaning of the term "autonomy" in regard to the indigenous peoples' right to exercise ordinary governmental functions within their territories. In the version we propose, the matters to be included in the term "autonomy" are not limited to internal and local affairs but include all affairs of the indigenous people.

It is essential that this declaration be understood to be a universal declaration of standards which will apply to all indigenous peoples regardless of their specific characteristics and circumstances. Certain indigenous peoples may have additional and more extensive rights according to their particular characteristics and circumstances, including their particular history, their location, their economies and many other practical factors such

as population, land base and political organization. Indigenous peoples under these circumstances may have, and legally should be recognized as having additional rights, particularly the right of self-determination and economic rights which go beyond the minimum standards of the universal declaration.

The right of indigenous peoples to self-determination is equal to the right of non-indigenous peoples to self-determination. We should resist efforts to re-define or to dilute for indigenous peoples a right that has already been recognized for all others. The declaration must carefully avoid establishing a category of second-class rights for indigenous peoples.

Politically and practically, we think that it will be important for the acceptance of the draft declaration on the part of indigenous peoples that there be as much latitude as possible for indigenous peoples to argue for and develop rights going beyond the declaration. This will help to overcome criticism on the part of indigenous groups who feel that the declaration does not go far enough to meet their particular needs and circumstance, or that it establishes a limitation or barrier against fulfilment of their fundamental rights.

7. In regard to item 26, we recommend a redrafting which will clarify the intended rights while remaining within the same basic scope. The recommended new text would be: "The right to travel freely and to maintain contact and co-operation, including cultural and social exchanges and trade, with indigenous people across State boundaries." We feel that transnational contacts need not be limited to merely traditional contacts and that it should be clear that travel back and forth across the borders is essential. Such free crossing and re-crossing of borders has been recognized by treaties, for example, in a treaty between the United States and Great Britain regarding the border between the United States and Canada. Changing the term "kith and kin" to "indigenous people" would clarify the meaning and also avoid unnecessarily limiting the contacts to one's own family or immediate relations.

Conclusion

We hope that these comments and recommendations will be received as constructive contributions. We welcome questions and criticisms, and we look forward to further discussion and analysis of the Draft Universal Declaration on the Rights of Indigenous Peoples.

Respectfully submitted,
Robert T. Coulter

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/4
8 June 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990

Item 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

Information received from Governments

Page

I. Introduction 2

II. Information submitted by Governments 2

A. Bangladesh 2

GE.90-12270/6531A

I. INTRODUCTION

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. In resolution 1990/62, the Commission on Human Rights requested the Secretary-General to give all necessary assistance to the Working Group in discharging its tasks. In resolution 1989/34, the Sub-Commission had made a similar request.

3. In accordance with these resolutions, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to Governments on 2 February 1990.

4. The present document contains replies received up to 23 May 1990 from Governments on developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations. Additional replies, if any, will be included in addenda to this document.

II. INFORMATION SUBMITTED BY GOVERNMENTS

A. Bangladesh

LIST OF THE ATROCITIES PERPETRATED BY SHANTI BAHINI IN THE CHITTAGONG HILL TRACTS

Date and Time 1989	Incidents
11 July at 13.00 hours	Md. Ali Zewaz, a civilian was killed by an explosive blast detonated by Shanti Bahini terrorists near Panchari Bazar Mosque at Panchari Upazila.
13 July at 09.35 hours	Shanti Bahini terrorists opened fire on a passenger launch in Shuvalong area under Rangamati Upazila. No casualty was reported.
19 July at 09.20 hours	Six persons including three tribals were killed and 17 other tribals and non-tribals injured when a time bomb planted by Shanti Bahini terrorists exploded on board a passenger launch at Burirghat under Naniarchar Upazila.
22 July at 06.00 hours	Shanti Bahini terrorists opened fire on non-tribal farmers at Mirzabil under Panchari Upazila. They abducted two unarmed civilians, Hazrat Ali and Izazur Rahman, and later killed them.
23 July at 11.23 hours	Shanti Bahini terrorists assaulted two non-tribal bus passengers travelling on the Khagrachari-Panchari road under Khagrachari Sadar Upazila.

Date and Time 1989	Incidents
26 July at 09.00 hours	Six persons including 5 tribals were killed and 15 persons including 14 tribals injured when Shanti Bahini terrorists opened fire on a rubber plantation workers carrier vehicle on Khagrachari-Dighinala road in Khagrachari Sadar Upazila.
10 August at 03.00 hours	A culvert was partially damaged when Shanti Bahini terrorists exploded a bomb at Pujgong area under Panchari Upazila.
10 August at 10.15 hours	Shanti Bahini terrorists opened fire on a passenger bus near Khagrachari in Khagrachari-Dhiginala road.
13 August at 08.00 hours	Shanti Bahina terrorists opened fire on Bhuyachari rehabilitation area under Khagrachari Upazila. No casualty was reported.
16 August at 11.10 hours	Twelve persons including 8 tribals were killed and 41 other tribals and non-tribals injured when Shanti Bahini terrorists exploded a bomb on the Rangamati bound passenger launch at Natun Bazar under Naniarchar Upazila. Another bomb exploded on the same day at Naniarchar Bazar under Naniarchar Upazila.
24 August at 10.15 hours	Shanti Bahini terrorists opened fire on six non-tribal woodcutters at Curuya Khali area under Langadu Upazila. As a result, a non-tribal woodcutter died on the spot.
27 August at 13.35 hours	A tribal woman with her two sons and a daughter were seriously injured by a bomb explosion arranged by Shanti Bahini terrorists. The injured persons were on their way to Barobaitosha area under Panchari Upazila. They are now in the Panchari Upazila Hospital under treatment.
27 August at 06.45 hours	Two bombs left behind by Shanti Bahini terrorists at Mahalchari Upazila were recovered by the Security Personnel.
28 August at 00.30 hours	Shanti Bahini terrorists abducted Dukhiram Tripura from his house from Karbaripara village under Matiranga Upazila.
9 September at 11.00 hours	A tribal was injured by an exploding bomb blasted by Shanti Bahini terrorists on Simanapara road in Khagrachari Upazila.
14 September at 04.05 hours	A tribal was killed and two others were injured when Shanti Bahini terrorists opened fire at Hazachara area under Merung Upazila.
14/15 September	Shanti Bahini terrorists kidnapped three tribals from Bhuyachari under Khagrachari Upazila. They are still missing and presumed dead.

Date and Time 1989	Incidents
15 September at 10.30 hours	A tribal was wounded by a booby trap at Kasalong Bazar under Marishya Upazila.
15/16 September	Shanti Bahini terrorists abducted two tribals from Kamalchari under Khagrachari. They are still missing and presumed dead.
19 September at 14.00 hours	Shanti Bahini terrorists opened fire on non-tribals. As a result four non-tribals were killed and one injured.
28 September at 14.30 hours	Shanti Bahini terrorists killed six fishermen at Uluchari area under Maghban Upazila.
29 September at 08.30 hours	A tribal was killed when Shanti Bahini terrorists opened fire on tribal workers in a rubber plantation area at Khagrachari Upazila.
30 September at 08.30 hours	Shanti Bahini terrorists opened fire on three passenger launches on their way to Rangamati-Barkal, Rangamati-Maineemukh and Rangamati-Marishya. As a result 7 civilian passengers were killed (including 3 tribals) and 21 injured (including 4 tribals).
30 September at 20.30 hours	A culvert was partially damaged when the Shanti Bahini terrorists exploded an explosive on Panchari-Khagrachari road under Khagrachari Upazila.
3 October at 14.30 hours	Sixty-one houses were burned down by Shanti Bahini terrorists when tribal people of Tarabonchari of Panchari Upazila refused to accompany them across the border to India as refugees.
4 October at 17.15 hours	Biru Kumar Chakma, a tribal was killed when Shanti Bahini terrorists opened fire at Shilachari area under Jurachari Upazila.
20 October at 19.30 hours	Paimra Karbari, a tribal was brutally killed in his house by Shanti Bahini terrorists at Kaukhali area under Ghagra Upazila.
21 October at 08.00 hours	Shanti Bahini terrorists opened fire on local non-tribal people at Maineemukh under Longadu Upazila. As a result, Zahanara, a young girl of eight years and Yousuf Ali were killed on the spot and two other non-tribals were injured.
29 October at 15.10 hours	Khokan Miah and Idris Ali, two non-tribals were killed and four others injured (including one tribal) in a bomb exploded by Shanti Bahini terrorists at Rangamati Upazila bus terminal.

Date and Time 1989	Incidents
4 November at 13.42 hours	Amir Hossain, Ramzan Ali and Phul Miah were killed on the spot when Shanti Bahini terrorists exploded an explosive on a road at Bandarsing village area under Panchari Upazila.
6 November at 12.00 hours	Shanti Bahini terrorists killed four woodcutters at Bhushanchara area under Barkal Upazila.
10 November at 07.00 hours	Meherunzzaman, a non-tribal was brutally killed by Shanti Bahini terrorists at Radhanagar area under Ghagra Upazila.
14 November at 10.45 hours	Three explosive experts of the Shanti Bahini terrorists were arrested on the spot when they planted time bombs in two shops at Dighinala Bazar under Dighinala Upazila. Later, bombs were recovered.
16 November at 13.15 hours	Three non-tribals were killed when they were grazing their cows at Suknachari area under Panchari Upazila.
17 November at 19.05 hours	Shanti Bahini terrorists shelled three workers at Choto Panchari under Panchari Upazila.
21 November at 05.00 hours	Shanti Bahini terrorists abducted four non-tribals namely Shamsul Alam, Abul Bashar, Abul Kashem, Shah Alam from Bilaichari area under Rangamati Upazila.
24 November at 12.45 hours	Shanti Bahini terrorists opened fire on non-tribals when they were tending their cows. As a result two non-tribals namely A. Rashid and Amanullah died on the spot.
25 November at 10.25 hours	Shanti Bahini terrorists opened fire on non-tribals at Golabari area under Khagrachari Upazila. As a result Laily Begum, a 10-year-old girl, died on the spot and another person, Zamal Haque, was injured.
25 November at 13.00 hours	Shanti Bahina terrorists brutally killed two non-tribals at Bandarchari Muck area under Longadu Upazila.
25 November at 13.05 hours	Narad Moni Chakma, a tribal was killed when Shanti Bahini terrorists opened fire at Babuchara Bazar area under Dighinala Upazila.
29 November at 12.05 hours	A culvert was partially damaged when Shanti Bahini terrorists exploded a bomb at Baroichari. Later, Security Forces recovered two kilograms of explosives.
2 December at 13.05 hours	A non-tribal was killed and another 23 were injured (including 7 tribals) when Shanti Bahini terrorists exploded a time bomb in a bus at Manik Chari Bazar under Manik Chari Upazila.

Date and Time 1989	Incidents
4 December at 18.00 hours	Shanti Bahini terrorists abducted Kinkar Chakma from Fakirachari village under Jura Chari Upazila. He is still missing and presumed to be dead.
6 December at 13.10 hours	Shanti Bahini terrorists injured Md. Jakir Hossain by exploding a time bomb at Uluchari area under Marishya Upazila.
18 December	Shanti Bahini terrorists opened fire on six non-tribals at Jarulchari area under Barkal Upazila. A non-tribal, Razab Ali, died on the spot.
26 December	A gang of Shanti Bahini terrorists opened fire for 10 minutes at Zeennapara area under Thanchi Upazila. Shanti Bahini terrorists also abducted Umes Chandra Tripura and later killed him brutally.
31 December	Shanti Bahini terrorists abducted Md. Muslim Uddin from Rupakari Ghat of Marishya Upazila. He is still missing and presumed to be dead.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/5
8 June 1990

Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July - 3 August 1990
Item 5 of the provisional agenda

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATION

Information received from non-governmental organizations

CONTENTS

		Page
I.	Introduction	2
II.	Information submitted by non-governmental organizations	3
	A. Indian Council of South America	3
	B. World Council of Churches	9

GE.90-12276/2050B

I. INTRODUCTION

1. In resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. In resolution 1990/62, the Commission on Human Rights requested the Secretary-General to give all necessary assistance to the Working Group in discharging its tasks. In resolution 1989/34, the Sub-Commission had made a similar request.

3. In accordance with these resolutions, appropriate communications requesting information, comments and suggestions were addressed by the Secretary-General to non-governmental organizations on 2 February 1990.

4. The present document contains replies received up to 23 May 1990 from non-governmental organizations on developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations. Additional replies, if any, will be included in addenda to this document.

II. INFORMATION SUBMITTED BY NON-GOVERNMENTAL ORGANIZATIONS

A. Indian Council of South America (CISA)

1. Violations of the human rights of the indigenous peoples of South America are an ever-present feature in all the countries on that continent. Regrettably, such violations do not receive close attention from the relevant international bodies, and as a result the abuses and outrages committed against the Indian peoples, for whom national politics in the various countries has neither room nor consideration, are concealed.

2. Racial, cultural, spiritual, economic and political discrimination is prevalent; our peoples are subjected to policies designed to break up their communities in order to drive a wedge between them and their culture and thus destroy them, as the so-called "development" projects greatly facilitate the invasion of their land and the plundering of their forests, thereby directly undermining the means of subsistence of rural inhabitants.

3. Indian communities in both the Andes and the Amazon region suffer the ceaseless onslaught of colonization and live in conditions of poverty which prevent them from developing normally and compel them to emigrate to towns and adapt to a new way of life totally alien from their own, with the consequence that they are frequently the victims of abuses and outrages.

4. Some of the numerous problems affecting indigenous peoples in South America are described below.

1. Argentina

5. In Argentina indigenous people are resolutely struggling to achieve their cultural demands. Logging companies motivated by the search for ever-greater profits are recklessly exploiting the forestry resources of the Indian peoples and communities of the Chaco region; the region between the Bermejo, Bermejito and Teuco rivers, comprising the communities of plot 39, Paso Novillo (confluence with the Lapelolé), El Algarrobal, Paso Sosa, El Colchón, Palma Sola and La Sireha, among others, is being plundered by logging operations to exploit the timber of the carob tree. The Tobas, a local indigenous people, survive in abject poverty in an increasingly sparse forest, being stripped of their carob trees in exchange for a pittance. This reckless exploitation is possible because the communities living in the so-called "Teuco Bermejito pastoral settlement" possess no title deeds.

2. Bolivia

6. Bolivia is the country with the largest indigenous population (71 per cent of the total population); in Bolivia social, cultural and economic discrimination, as well as unlawful expropriation of land, are the order of the day.

7. The complaint made by the Auxiliary Bishop of Santa Cruz about the way in which the United States sect "New Tribes Mission" has been operating for a number of years in its efforts to "civilize" the Yuki people had already been formulated some time ago by a priest, Herman Nigris, but it received no attention from the regional authorities, still less from the Government.

As a result, we are now witnessing the extinction of an ancient people already existing in the pre-Columbian era, which is gradually losing its language, culture, land and autonomy on account of the greed of private economic interests. The ethnocide being committed against this ancient people, which began with the death of many Yukis and continued with their forced resettlement and "civilization" in accordance with the imperialist model, which does not recognize any ways or philosophies of life different from its own, should be condemned.

8. Accordingly, CISA calls upon the Government of Bolivia, through its agencies, to put a stop to the advance of colonizers, hunters, loggers and others into reserves; to give the "resettled" Yuki people back its territories, and to provide it with guarantees for its survival and growth free from obstacles and hindrances.

9. Abuses have been committed by the police against Indians in Sacaca, Alonso de Ibañez province to the north of Potosí, where the community's inhabitants are the victims of abuses of authority; they are detained on trivial grounds and then made to pay fines of over 150 bolivianos which are beyond their means. The police also commit abuses against women, who are detained on any pretext, imprisoned and brutally raped. Such behaviour constitutes a violation of the right to humane conditions of detention, as the victims are subjected to torture and cruel and inhuman treatment.

3. Brazil

10. The democratic transfer of power in Brazil in November 1989 unleashed a climate of violence in the country's rural areas in the closing months of the year. As of 1 September, the total number of deaths attributable to land-ownership conflicts in Brazil was 42, almost all of them rural workers or Yanomami Indians. Rural violence most seriously affects those who are struggling to bring about agrarian reform, in particular landless rural workers. Many of the peasants taken prisoner in the course of these conflicts are tortured in prison; one specific case concerns a peasant, Ivan Brito de Assis, taken prisoner on 29 August 1989 in the state of Alagoas, who was cruelly tortured by the police in an unspeakable crime.

11. The struggle to conquer the land and defend the right of the indigenous peoples to recover their land takes various forms; one example is the gesture made by an Indian, Davi Kopenawa Yanomami, in September last, when he threatened to return the Global 500 prize he had been awarded in 1989 by the United Nations Environment Programme, in order to bring pressure to bear on the Brazilian Government to stop authorizing the invasion of Indian land. He also demanded that the Government should reverse the decision that breaks up Yanomami territory into various areas isolated from each other, since the Brazilian Constitution stipulates that the geographical unity of indigenous areas shall be preserved.

12. Another protest took place on 13 September 1989, when for the first time there was a sit-in in the Brazilian Parliament by indigenous kinsmen representing 60 tribes, who had been compelled to turn to Parliament in order for their demands and complaints to be heard. One of the complaints concerned the establishment of a new official body to replace FUNAI (National Foundation for Indians), as in the eyes of indigenous people FUNAI symbolized massacres,

theft and corruption, and had failed to carry out the mission with which it had been entrusted. Another complaint concerned the complete delimitation of Indian land within five years and the establishment of indigenous schools.

13. A serious complaint concerning a human rights violation was made by Atila Núñez, Secretary for Labour of the State Governor's Office, who reported that he had ascertained that on the Campelo estate, in the Campos region, dozens of Indian and peasant families worked for a two-month period under conditions of virtual slavery on a sugar-cane plantation in the north-east of Brazil, belonging to the "São João" sugar combine; more than 130 men, women and children worked like slaves for a 12-hour day, in exchange for which they received only one meal a day and no wages. They were housed in seven decrepit shacks with no light, water or washing facilities. The managers of the combine claimed they were unaware of what was happening and put the blame for the unlawful acts on the estate's agent, Luis Ricardo Tenorio, who is currently in prison charged with keeping workers in slavery.

14. Such shameful incidents have been occurring for many years in Brazil. In the last 17 years almost 60,000 rural workers have lived in slavery; 178 cases of slavery have been discovered in recent years, in addition to 1,742 cases of persons who have fled slavery-like conditions.

15. On 25 July 1989 the Government of Brazil announced that it intended to legalize the activity of between 40,000 and 100,000 garimpeiros (gold prospectors) illegally mining in the state of Roraima on the border with Venezuela and Guyana, on the traditional territory of the Yanomami Indians, who, together with the other indigenous peoples in Roraima, are the main victims of Brazil's official indigenous policy, which explains why their struggle has come to symbolize the indigenous problem in Brazil.

16. The wave of violence that has swept over indigenous peoples in recent years has been marked by terror, as estate owners, paramilitary gangs established by them and the police itself have threatened, harassed and forcibly displaced indigenous communities.

17. In June 1989 approximately 100 families of landless rural workers decided to occupy a neglected estate belonging to a landowner, José Machado Netto, in the locality of Floresta Azul, Espírito Santo state, from which they were violently expelled. Espírito Santo is one of the regions of greatest conflict in Brazil, as thousands of hectares of land are owned by a handful of landowners, while nearly 25,000 families of landless workers and another 100,000 "Boias Frias" await the implementation of the agrarian reform, which the new Republic has so far failed to carry out.

18. On 9 March 1989 approximately 400 indigenous people were wounded in the course of a military operation carried out by the army to dislodge 500 families occupying the Santa Elmira estate in the state of Rio Grande.

19. The Federation of Indigenous Organizations of Rio Negro in the state of Amazonas has reported that the Calha Norte project, which involves the establishment of military barracks along Brazil's northern frontier, has entailed the confinement and death of a number of Indians in that region, and that virtual concentration camps have been set up to contain 30,000 indigenous people from some 100 tribes in the Amazon region. This constitutes genocide and a violation of the right to liberty and security of person.

4. Colombia

20. Colombia has one of the worst records of human rights violations in South America. The violent events that have taken place recently are well known, in particular the massacres of peasants and indigenous people in Córdoba, Urabá, Magdalena Medio, Arauca and other regions in the country, mainly masterminded by an alliance of landowners, the military and drug traffickers. Thus, in the department of Cauca, paramilitary groups have gradually made their appearance in indigenous peasant communities, and hired gunmen are beginning to make their presence felt by murdering grass-roots activists and carrying out terrorist attacks such as that committed on 6 September 1989 against the regional indigenous organization of CRIC (Cauca Regional Indigenous Council).

21. Another deplorable occurrence was the murder of María Juana Camayo, leader of the indigenous community of Paniquita, who died on 22 July 1989 when she was forcibly dragged from her home by unidentified individuals and then cruelly murdered. It should be added that this incident took place after the victim had been threatened by local landowners, as she was one of the principal instigators of the land recovery movement. The same fate befell another peasant leader, Berta Cecilia de Jesús, who was also cruelly murdered on 22 July in the municipality of Timbio. The murdered leader had been actively involved in land recovery activities in rural areas alongside another murdered leader, Jaime Bronstein, and this led to her receiving death threats on several occasions.

5. Chile

22. In Chile, the Mapuche people makes up the majority of the 1.5 million indigenous inhabitants. They are calling for State support in order to survive and pursue their development in accordance with their own characteristics. They demand recognition for the territory of the Mapuche people and protection for the land currently occupied by them, including all the natural resources of the soil and subsoil, as when the Spaniards arrived the Mapuches occupied an area of 31 million hectares whereas nowadays they only possess 215,000 hectares in spite of the growth of their population.

23. In August 1989, Sofía Painequeo, a Mapuche leader, denounced before the United Nations the seizure of ancestral lands situated in the south of Chile. The Mapuches are the victims of persecution, the auctioning of their land and eviction for failure to pay taxes and for living on land over which the State claims fiscal authority or which belongs to landowners. Mrs. Painequeo also denounced the forthcoming implementation of the Astillas project, which will entail the clearing of 120,000 hectares of the indigenous inhabitants' forests.

6. Ecuador

24. The Confederation of Indigenous Nationalities of Ecuador's Amazonian Territories (CONFENIAE) has reported that indigenous people in this region are concerned about the development of petroleum extraction in the Ecuadorian Amazon region, which entails the daily destruction of the ecology and rides roughshod over the peoples that inhabit the region. As a result there have been uprisings in the Quechua communities of Huataraco and San Carlos in the province of Napo, in protest against the Government's lack of will and

determination to prevent the destruction of their territories by petroleum extraction and prospecting which damages their plantations. These communities are demanding that the ecological damage should be evaluated and compensation paid.

25. The Tstchila indigenous people is on the brink of extinction because of the constant encroachment on its land by settlers in the face of official apathy. This indigenous people, which comprises 1,000 members living in the forest region of the western foothills of the Andes, is gradually losing its territory amid general indifference.

7. Paraguay

26. The indigenous people of Paraguay have been the protagonists of the most momentous and largest mobilizations in a wave of land occupations that occurred in the first months of the Paraguayan people's return to the fold of democracy. Some 6,932 peasant families have occupied 24 estates (approximately 63,570 ha) in the Alto Paraná region; the departments of greatest tension are Itapúa, Caquazú and Canindeyú, where landless Indians have proved capable of organizing themselves to occupy estates in spite of military repression and eviction.

27. The cause of these land seizures lies in the high level of concentration of land ownership in a few hands, seizure being the last resort available for those without land to press their claims. Approximately 4,000 families have been evicted from at least 17 land seizures, and are now living in tents, in some cases along streets and highways and in others in the area surrounding estates.

28. Large-scale estate seizures are a natural outcome of the new political era which has opened in Paraguay and reflect an outburst of long-repressed peasant demands. The new Government has used a combination of troops and police to evict the communities from all their seizures, and has promised that the land problem will be solved in due time by legal means, a commitment that is unlikely to go beyond words, leaving the landless indigenous people as the sole victims.

29. The problem of the lack of land has arisen from the sale, many years ago, of a total area of 3.5 million hectares, equivalent to one third of the vast Paraguayan Chaco, to the Anglo-Argentine firm Carlos Casado S.A., an act that constitutes a breach of the indigenous people's land rights.

8. Peru

30. The Indian communities in Peru are suffering from the consequences of a dirty war and from the State's disregard for the Peruvian masses, attributable to the misguided policy adopted by the Government towards rural and urban workers. This is confirmed by the situation in villages situated in the forest in the Alto Huallaga and in the central forest, which are effortlessly controlled by guerrilla groups belonging to Sendero Luminoso, the MRTA (Tupac Amaru Revolutionary Movement) and drug traffickers.

31. Aucayacu, a town of 2,500 inhabitants in the eastern department of San Martín, is controlled by guerrillas allied to drug traffickers, who have imposed their authority and a rule of terror, and have taken advantage of the complete neglect of this area, in which coca leaves are illegally cultivated

before being processed into cocaine paste and ferried out of Peru in Colombian light planes for sale in Europe and the United States. The silent, terrorized inhabitants are familiar with the secret laws of the guerrillas and are perfectly capable of distinguishing rebels, although they never identify them, on pain of death. As a result, the inhabitants are the unwilling spectators of the terror which is commonplace in the region, where a fierce battle is taking place between Sendero Luminoso and its rival, the MRTA, for control over the area and its inhabitants, and a share of the crop: as a result, the population has found itself completely isolated.

32. In an attempt to provoke a boycott of the municipal elections of 12 November 1989, Sendero Luminoso murdered more than 55 peasants in the Andean area and some 10 elected officials in different parts of the country. Similarly, under the pretext of maintaining law and order and eliminating the guerrillas, the police and the armed forces have burst in on peasant communities and committed all kinds of violations without being brought to justice.

9. Recommendations

33. In view of the harsh circumstances in which indigenous peoples are living, we call upon all Governments to observe the fundamental rights of the indigenous communities, including respect for their ancient lands and for their culture, autonomy and specific way of life.

34. The indigenous peoples are endowed by history with a specific right: the right to exist as indigenous peoples with common rights and an ancestral identity which is part of their body and spirit, and which they must defend in order to restore links with their past, harmony and mutual respect.

35. Indigenous communities must take part in preparing development plans in order to direct economic, social and cultural activities as a whole towards a form of development that benefits and raises the standard of living of our indigenous communities. This plan should be designed with an eye to the future, although it should be based on the past, on history and on the current situation.

36. We demand that Governments should instruct the appropriate authorities to shed light on the tragic events which have affected Indian and peasant communities; we also request that those who persecute peasant and Indian leaders for claiming their inalienable rights, such as the right to land and the right to life, should be prosecuted.

37. Our aim is to ensure that in the near future all the groups that compose society are able to lend an ear to one another's problems and jointly to seek ways of ensuring that we cease to be the victims of repression, discrimination and so much injustice.

38. CISA is an organization that brings together and represents the indigenous peoples and nations of South America, and as such it calls upon the Governments of South America to put an end to the outrages being committed against indigenous peoples and to protect their right to their own ancient history and culture. Indians can no longer serve as cannon fodder for dirty wars between guerrillas and anti-Indian government forces. They cannot go on being mere objects of political, religious and economic use, consumption and abuse.

B. World Council of Churches (WCC)

1. Darwin documents

39. The Darwin Declaration and the Darwin Petition have followed the following "document path":

(a) June 1989: Presented to indigenous delegates attending the International Labour Organisation meeting in Geneva on the revision of Convention 107 (the only international convention on indigenous people).

(b) July 1989: Presented at the WCC Central Committee meeting in Moscow. The Darwin meeting and documents were highlighted several times during plenary reports and the Unit Committee responsible for this issue made the following recommendation to the meeting: "The Unit Committee received with appreciation the report of the Land Rights Consultation convened in Darwin, Australia, in May 1989. It noted the plea of the indigenous people for the churches to stand with them in their struggle for international recognition of their sovereignty, self-determination and land rights. It also noted the request of the Aboriginal people for full involvement in the planning and participation in the 1991 Canberra Assembly. The Committee requests the General Secretary to commend the Darwin Declaration and the Darwin Petition to the member churches for study and action."

The General Secretary has complied and ordered the documents translated into French, Spanish and German and distributed to all 300 member churches of the WCC for study and action.

(c) August 1989: Mrs Erica-Irene A. Daes commended the Darwin meeting at the session of the United Nations Working Group on Indigenous Populations of which she is the chairperson, and ordered the translation of the documents into the official United Nations languages for distribution to United Nations members and the non-governmental organizations working on indigenous and land rights issues.

(d) October 1989: The staff of the Programme to Combat Racism (PCR) presented the Darwin documents to its 30-member global Commission for approval of the mandate set forth in the Darwin Petition. The Commission accepted the documents and decreed that the implementation of the resolutions should form the indigenous people and land rights programme for PCR. The Commission called particular attention to the implementation of resolutions dealing with "the issue of tourism and its impact on the struggle for land rights; the racist element in tourism, particularly the effect on women of colour in the tourism business"; the Commission also called for an indigenous person to work on land rights issues and for special programmes on children under racism.

2. Meetings and consultations

40. August 1989: As called for in the Darwin Petition, we supported and attended a meeting convened by the Ecumenical Coalition on Third World Tourism in Hawai'i. We are also providing financial support for the follow-up to that meeting. The indigenous participants issued the Hawai'i Declaration, challenging the churches and international community to deal with the problems

of tourism. If you would like a copy of this declaration, please write to PCR or to Hawai'i Ecumenical Coalition on Tourism, c/o AFSC 2426 O'ahu Avenue, Honolulu, HI 96822, United States of America.

41. July 1989: We supported a consultation on tourism in Taiwan, which focused on the destructive impact of tourism on the indigenous population there.

3. Aboriginal issues

42. We have provided financial support for the groups working on Aboriginal deaths in custody.

43. With regard to the upcoming WCC General Assembly to be held in Canberra, Australia in 1991, WCC has agreed to the following:

(a) That Aboriginal people should welcome the Assembly;

(b) That there be a plenary on Aborigine issues;

(c) That Aboriginal consultants be appointed to the various committees planning the Assembly and to the sub-themes;

(d) That a Centre for Aborigines be established on the Assembly grounds to showcase Aboriginal art, culture, political and social issues;

(e) That Aborigines have significant input into the Worship Committee.

44. This is in accord with resolution three, points 3.5 to 3.11, contained in the Darwin Petition.

45. PCR staff has embarked on a process to educate the WCC staff and the delegates to the Assembly on Aboriginal issues. We have had a major plenary and we are now planning a second one for the Central Committee members.

46. PCR staff is working quite closely with the Aborigine and Islander Commission on the Assembly and other issues.

4. Indigenous participation

47. PCR is working to increase the number of indigenous participants at the meeting on Justice, Peace and the Integrity of Creation held in Seoul, Korea in 1990 and the 1991 Assembly to ensure that the resulting documentation will have a strong focus on indigenous and land rights issues.

5. International advocacy

48. PCR is meeting with groups and organizations to establish a secretariat for indigenous peoples who come to Geneva to attend United Nations meetings; we are working to ensure that financial support is provided in a structured and timely manner.

49. PCR is preparing a major presentation to the United Nations during the session of the Commission on Human Rights in February 1991 which will highlight the issues raised in the Darwin documents.

6. Publications

50. PCR has highlighted indigenous issues in its regular publications: LINK (which you will have begun receiving regularly) and PCR INFORMATION. Enclosed is a special edition entitled Land is our Life.

51. PCR has encouraged the reprinting of the Darwin Documents in a wide variety of both in-house and external publications.

52. The WCC Youth Department and Christian Medical Commission have done special editions on land rights; the latter did a special on the Aborigines which we hope to send you.

7. Women Under Racism

53. We participated in a special seminar on Women Under Racism, where we raised the issue of indigenous women.

54. We have reprinted indigenous women's testimony before the United Nations in our widely distributed newsletter.

55. We are working together with the Women's Unit on a packet focusing on Women Under Racism, in which indigenous women issues will be highlighted.

56. We will convene a special meeting of indigenous women before the 1990 Seoul and 1991 Canberra meetings.

8. Funding

57. A large portion of the grants we make continue to be to indigenous groups. To make the process easier for them, we have published a new brochure (see enclosed) which lays out the difference between our funding instruments. Our 1989 budget for indigenous issues is, however, exhausted and we invite applications only for 1990.

9. Commemoration of 1990 and 1992

58. We are in discussions with our Maori sisters and brothers on actions to be undertaken for 1990 for commemoration of the Treaty of Waitangi. We, particularly, invite the Maori Darwin participants to inform us of ways we can be helpful.

59. We are having discussions with the Latin American Council of Churches on the convening of a meeting in 1990 between blacks and indigenous people in the western hemisphere to plan a programme of action for 1992.

60. We want to assure you that we intend to keep up this pace of implementation of the Darwin resolutions and hope to keep you informed on a much more regular basis. We ask you to share with us any information about your struggles which we could print in our publications.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/6
9 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection of
Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990

Item 7 of the provisional agenda

OTHER MATTERS

Information received from the United Nations Centre on Transnational Corporations

1. In the report of its seventh session in 1989, the Working Group on Indigenous Populations recommended that the United Nations Centre on Transnational Corporations assist the Working Group "in preparing a data base on transnational investments and operations on indigenous peoples' lands and territories, and in particular those lands which are currently in dispute".

2. The Sub-Commission on Prevention of Discrimination and Protection of Minorities endorsed the recommendation of the Working Group in paragraph 3 of its resolution 1989/35 of 1 September 1989, which invited the United Nations Centre on Transnational Corporations "to assist the Working Group on Indigenous Peoples in compiling information on investments and operations on the lands of indigenous peoples, including lands which are currently in dispute."

3. Following technical consultations with the Centre on Human Rights, the United Nations Centre on Transnational Corporations wishes to propose the following research methodology for this data base, and for future annual reports to the Working Group based upon the information received and analysed.

Aims and scope of the project

4. In his exhaustive Study of the Problem of Discrimination against Indigenous Populations (E/CN.4/Sub.2/1986/7/Add.4), the Special Rapporteur of the Sub-Commission, Mr. Jose R. Martinez Cobo, recommended, inter alia, that "the environmental impact of the exploitation of non-renewable natural resources on indigenous land, especially water which is so vital for survival, should be seriously and urgently investigated" (Chapter XXII, para. 554). The Special Rapporteur also referred to the need to find means to ensure that indigenous peoples' lands are protected from "exploitation by multinational corporations without the explicit consent of the communities concerned" (para. 547).

5. The Centre notes that the annual reports of the Working Group on Indigenous Populations have made frequent reference to the impacts of large-scale development projects on indigenous peoples' lands. The socio-economic impacts of the activities of transnational corporations on indigenous peoples have been discussed in the Centre's fourth survey, Transnational Corporations in World Development (ST/CTC/89), Part XIV; in studies and reports of multilateral development institutions, such as the World Bank paper, Tribal Peoples and Economic Development (May 1982); and a recent paper prepared by the International Labour Organisation, Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), Report VI (1) (1988). Also relevant are ILO, The Social and Economic Effects of Petroleum Development Programmes in Non-OPEC Developing Countries (Geneva, 1985), and Yamaguchi and Kuczek, "The social and economic impact of large-scale energy projects on the local community", International Labour Review, vol. 123, No. 2 (March-April 1984).

6. The special importance of land to indigenous peoples, and the need to ensure indigenous peoples' direct role in decisions affecting their lands, is also reflected in International Labour Organisation Convention No. 169, and in the relevant conclusions and recommendations of the Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States (E/CN.4/1989/22, subparas. 41 (r) and 41 (s)), the Global Consultation on the Right to Development as a Human Right (E/CN.4/1990/9, section VII, paras. 22-23), and the World Commission on Environment and Development (A/42/427, Part 3.3, paras. 70-78).

7. Particularly relevant to the question of the protection of indigenous lands is the strategy of "sustainable development", which is being promoted today because it has become obvious that current economic welfare is being achieved at the expense of future living standards. The essential meaning of sustainable development is that natural resources and natural systems (including material resources and environmental resources) should be left sufficiently intact, to permit continuing gains in economic welfare into the foreseeable future. In this spirit, the World Commission on Environment and Development defined sustainability as development that "meets the needs of the present without compromising the ability of the future to meet its own needs".

8. The concept of sustainable development is one that is very familiar to indigenous peoples. Indeed, their survival has always depended on the practice of sustainable development. The world's population as a whole is

only now appreciating that unsustainable development - that is, unechecked industrial growth and population growth - is leading to environmental disaster. William Ruckleshaus has stated that:

> "Sustainability was the original economy of our species. Pre-industrial peoples lived sustainably because they had to; if they did not, if they expanded their population beyond the available resource base, then sooner or later they starved or had to migrate. The sustainability of their way of life was maintained by a particular consciousness regarding nature; the people were spiritually connected to the animals and plants on which they subsisted; they were part of the landscape, or of nature, not set apart as masters. 'Toward a Sustainable World', Scientific American, vol. 261, No. 3 (September 1989)."

9. Despite the many other official expressions of concern over the nature and extent of investments and activities on the lands of indigenous peoples, comprehensive published geographic and statistical data in this field are lacking. Nor do existing United Nations data bases, recurrent United Nations statistical publications or global surveys, such as the Report on the World Social Situation, contain information on the conditions of indigenous peoples or on the status of their lands.

10. The Centre believes that the aim of the co-operative project contemplated by Sub-Commission resolution 1989/35 should be the creation of a quantitative data base which fulfils the apparent need for comprehensive, standardized information. Such a project would need annual updating in view of the rapid pace of change in the global economy, especially the activities of TNCs from newly industrialized countries, and TNCs' expansion into new sectors such as services, particularly tourism. This project will enable the Centre and Working Group to determine the impact of TNC activities on sustainable development in general, and on the development of indigenous peoples.

11. Priority should be given to those TNC activities which are most likely to have a significant impact on indigenous peoples, or which are least likely to be controlled by indigenous peoples themselves. These activities may include mining, hydroelectric and reclamation projects, large-scale commercial forestry, fishing, and agrarian resettlement.

12. The project should give priority to ascertaining, as far as practicable: (a) the location and character of economic activities conducted by TNCs on indigenous lands; (b) the identity and utlimate source of control over these entities, including parent companies; (c) the location and extent of indigenous peoples' occupation and use of land, as well as claims to land; and (d) the impact of TNCs' operations on these lands.

13. In keeping with past resolutions of the Commission on Human Rights in this field, most recently its resolution 1990/62 of 7 March 1990, the data base should include the "diverse realities of indigenous populations in all parts of the world."

Data collection process

14. Detailed information on the structure, ownership and interrelationships among TNCs is already available in UNCTC data bases. This information is generally organized by country and business entity. Information not currently

available within the United Nations system relates to: (a) geographical areas within States which are of concern to indigenous peoples, and (b) the nature of business activities underway in these specific areas.

15. Indigenous peoples' organizations and other interested non-governmental organizations have often submitted information to the annual sessions of the Working Group on development projects and the activities of TNCs in their respective parts of the world. This information, some of it dating back to 1982, has never been consolidated or analysed. It appears to vary greatly in quality and detail, and is fragmentary in geographic scope. While it is insufficient at present to serve as the basis for the report contemplated by Sub-Commission resolution 1989/34, it does suggest that the Working Group itself can play the central role in collecting more systematic and detailed data.

16. The most efficient way of collecting systematic data on the location and character of business operations affecting lands of indigenous peoples, is to distribute and discuss a questionnaire at the next annual session of the Working Group. Recent sessions of the Working Group have been attended by hundreds of indigenous people, most of them representing national or local groups that do not have consultative status, and have no other direct contact with the United Nations.

17. Indigenous NGOs should also be encouraged to circulate the questionnaire as widely as possible among those national and local indigenous organizations with which they maintain contact, and to make their own independent efforts to compile information relevant to this study.

18. Copies of the questionnaire could also be circulated in due course to Governments, specialized agencies, intergovernmental and non-governmental organizations, under a note verbale inviting them to transmit relevant information to the Centre.

19. It is noted that the ILO, in the course of administering its Convention No. 107 and, in the future, its Convention No. 169, receives considerable information relating to indigenous peoples' lands. Close co-operation with the ILO in the preparation of this data base would therefore be extremely useful.

20. The text of the questionnaire and any discussions in the Working Group should make it absolutely clear that this is not a mechanism for making complaints or challenging specific actions by business entities or Governments. It may be useful, however, for the UNCTC to contact Governments for additional information or clarification, when information has been received regarding activities in that country. Such contacts would help ensure an accurate and thorough report.

21. In view of the fact that indigenous peoples often inhabit areas of the country where United Nations system programmes and agencies are co-operating in various forms of development and humanitarian assistance, it would also seem useful to contact these programmes and agencies for information and clarification. In particular, contacts should be made with the United Nations Development Programme, the United Nations High Commissioner for Refugees, UNICEF, and the World Bank.

Data analysis

22. The initial data assembly, data base management, and analysis will be conducted by the Centre in New York.

23. The Centre will compile a series of standardized national and regional maps which can be updated on an annual basis as additional information is received, and which can serve as a basic reference work for ongoing research in this field. The Centre will also compile a computerized data base, which will be updated annually. This data base will be organized by country and by indigenous groups.

24. As noted earlier, the project will be chiefly descriptive in nature. After organizing relevant information geographically on maps and in the data base, however, the Centre will utilize its existing information resources to determine the full identity of business entities engaged in activities on the lands in question, and then to cross-index the data base by the ultimate parentage of these entities. It will also provide an analytical summary of any relationships between the activities of these entities on the lands in question, and their other national and international economic activities.

25. To augment its capabilities, the Centre has arranged with the American Indian Studies Center, University of Washington, Seattle, for the recruitment and co-operative supervision of interns for the compilation of maps and the data base.

26. The Centre anticipates consulting regularly with the Centre for Human Rights on matters of a technical nature, and to ensure that the form and contents of the data base and reports will be useful in supporting the standard-setting activities of the Working Group.

27. The Centre hopes that the members of the Working Group will play an active consultative role in this project, and continue to provide observations and suggestions for improving the data base and future reports. It is also hoped that the Working Group will encourage the greatest possible participation by Governments and indigenous peoples organizations in the data-gathering process.

Form of the report

28. It is suggested that the first report of the results of this project contain six sections, as follows:

I. Executive summary
II. Description of research methodology
III. Analytical summary of data, by region and country
IV. Analytical summary of data, by business parentage
V. Overview of the data in relation to TNC issues
VI. Overview of the data in relation to standard-setting

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/7
30 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July - 3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the informal drafting groups established to consider the first revised text of the draft Universal Declaration on Indigenous Rights

The present document contains the report and text adopted by the informal drafting group established to consider the provisions on land and resources contained in the preamble and Parts III and IV of the first revised text of the draft Universal Declaration of Indigenous Rights (Annex II, E/CN.4/Sub.2/1989/36).

GE.90-12558/7146A

Report by Drafting Group I

Chairman: Mr. Miguel Alfonso Martinez

INTRODUCTION

At the first meeting of its eighth session, on 23 July 1990, the Working Group on Indigenous Populations decided to establish an informal drafting group, under the chairmanship of Mr. Miguel Alfonso Martinez, to consider the provisions on land and resources contained in the Preamble and Parts III and IV of the first revised text of the draft Universal Declaration on Indigenous Rights submitted by the Chairman/Rapporteur of the Working Group (Annex II, E/CN.4/Sub.2/1989/36.

PARTICIPATION

The informal drafting group, under the chairmanship of Mr. Alfonso Martinez, was attended by Mr. Ribot Hatano, another member of the Working Group. Present also were observers for a number of governments, one United Nations specialized agency and a considerable number of non-governmental organizations.

METHOD OF WORK

The informal drafting group held six meetings from the afternoon of 23 July 1990 to the afternoon of 27 July 1990. The group held a first reading of the text under its mandate, during which a wide-ranging discussion lead to a number of specific proposals to revise the text. On 27 July 1990, the Chairman offered a draft text in which he attempted to consolidate the various proposals advanced in the light of (a) the general trends which emerged from the debate, (b) the revised text submitted by the Chairman/Rapporteur and (c) her analytical commentary contained in document E/CN.4/Sub.2/1990/39.

During the discussion of the text offered by the Chairman, further proposals were made to improve the text, some of which were incorporated in the final text (Annex I).

Annex I to this report contains the text offered by the drafting group for further discussion by the Plenary of the Working Group and consideration by the Chairman/Rapporteur.

Annex II contains specific concerns expressed by some participants on the text offered by the drafting group which they had asked to be reflected in the group's report.

ANNEX I

DRAFTING GROUP 1

FINAL TEXT RECOMMENDED BY DRAFTING GROUP ONE (PREAMBLE AND PARTS III AND IV OF THE DRAFT UNIVERSAL DECLARATION ON INDIGENOUS RIGHTS)

The General Assembly,

Considering that indigenous peoples and individuals are born free and are equal to all other peoples and individuals in dignity and rights, in accordance with international standards,

Recognizing the right of all indigenous peoples to be different, to consider themselves different and to be respected as such,

Considering that all peoples have contributed and will further contribute to the progress, richness and diversity of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the specific and urgent need to promote and protect those rights and characteristics which stem from indigenous peoples' histories, spirituality, traditions and cultures, as well as from their legal, social, spiritual and economic structures and institutions; especially as these are tied to the land and other territories and resources traditionally occupied or otherwise used by them,

Emphasizing the need for confidence-building measures in indigenous lands and other territories, in order to promote peace, demilitarization, understanding and friendly relations among all peoples of the world,

Concerned that many indigenous peoples have been and continue to be unable to exercise, enjoy and assert their inalienable rights and freedoms including their basic human rights and fundamental freedoms, frequently resulting in insufficient land and other territories and resources, poverty, deprivation and marginalization; which in turn may lead them to voice their grievances and to organize themselves in order to bring an end to all forms of discrimination and oppression which they face,

Convinced that all doctrines and practices of racial, national, ethnic, religious or cultural superiority are legally and scientifically wrong, morally condemnable and socially unjust,

Reaffirming that all indigenous peoples, in the exercise of their rights and freedoms, cannot be subjected to any kind of [adverse] discrimination,

Endorsing calls for the revitalization, consolidation and strengthening of indigenous societies and their traditional institutions, cultures and social structures, through respect for their inalienable right to self-determination, which includes their right to development oriented to the fulfilment of their own spiritual and material needs,

Emphasizing that special attention should be granted to the promotion, protection and implementation of the rights of indigenous women and children and to the acquisition and utilization of their traditional skills,

Convinced that the right of indigenous peoples to self-determination includes their right freely to determine their present and future relationships with the political, economic and social life of States and that the reaffirmation of said right and of all others enshrined in this Declaration is not to be construed, at present, as in any way limiting their enjoyment of equal rights with citizens of the States in which they currently reside,

Bearing in mind that nothing in this Declaration may be used as a justification for denying to any people, which otherwise satisfies the criteria generally established by human rights instruments and international law, its right to self-determination,

Recalling the duty of all States to comply with, in good faith, and effectively implement all international instruments to which they are parties, as they apply to indigenous peoples and their components, in conjunction with them,

Acknowledging the need for international standards taking account of the diverse realities of indigenous peoples in all parts of the world.

SOLEMNLY PROCLAIMS the following DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES and calls upon all States to take prompt and effective measures to implement this Declaration in conjunction with indigenous peoples:

PART III

Paragraph 11 bis. See annex II for the alternative texts proposed by the group,

Paragraph 12. The right to ownership, [original title,] possession and use of the lands and other territories and resources traditionally occupied or otherwise used by them. Said lands and other territories and resources may only be used by other parties with free and genuine consent of the indigenous people concerned, as expressed through their own institutions, in accordance with their traditions, and as witnessed by means of a treaty, agreement or other type of mutually-accepted legally-binding instrument,

Paragraph 12 bis. The right to demand and obtain from non-indigenous authorities full and effective protection of indigenous lands and other territories and resources, particularly from alienation to non-indigenous parties; as well as the formers' effective recognition of the need for indigenous peoples to secure and maintain an adequate land-resource base for the satisfaction of their spiritual and material needs,

Paragraph 13. The right to full and effective recognition of and protection for their own land-tenure systems and institutions, as well as for their traditions with respect to land/resources use, enjoyment and occupancy,

Paragraph 14. The right to effective ownership, [original title,] possession, use, conservation and control of renewable and non-renewable surface and subsurface resources pertaining to the lands and other territories traditionally occupied or otherwise used by them, including flora and fauna, fresh and sea water and sea ice,

Paragraph 14 bis. The right to ownership, protection and control of their intellectual property and their right to use broadcast and all other forms of telecommunication frequencies,

[Paragraph 15. The right to reclaim the land and other territories and resources traditionally occupied or otherwise used by them, irrespective of such claim being time-barred or prescribed. This includes the right to effectively seek and obtain just and fair compensation where repossession is not possible, and when the alienation of said lands, territories and resources has been either based on theories such as those related to discovery, terra nullius, waste lands or idle lands, materialized by means of coercion, or was otherwise obtained without their free and genuine consent. Compensation, if the parties agree, may take the form of land and other territories and resources of quality, quantity and legal status at least equal to that of the lands, other territories and resources traditionally occupied or otherwise used by them,]

Paragraph 16. The right to a safe and healthy environment and the right to the protection of the environmental integrity of the land and other territories and resources traditionally occupied or otherwise used by indigenous peoples. Where any destruction, deterioration or pollution occurs, the right to full and effective restitution, including compensation for damages of a collective and/or individual nature,

Paragraph 17. The right to require that non-indigenous authorities and other parties, including transnational corporations, request and obtain the free and genuine consent of the indigenous people concerned prior to the commencement of any project directly related to indigenous lands and other territories and resources. Preliminary studies must be undertaken, in collaboration with the indigenous peoples concerned to assess the environmental, social, cultural and economic impacts of these activities. The terms of the economic and other benefits that are to accrue to indigenous peoples as a result of said projects must be established with their free and genuine consent, as witnessed by a treaty, agreement or any other mutually-agreed legally-binding instrument. It also includes the right to seek and obtain just and fair compensation for damages sustained by indigenous peoples after the initiation of said mutually-agreed projects and caused by acts or omissions for which non-indigenous parties are subject to administrative, civil or criminal responsibility.

PART IV

Paragraph 18. The right to maintain, protect and further develop, within their traditional lands and other territories, their economic structures, institutions, and traditions. This right includes the right to be secure in the enjoyment of their traditional means of subsistence and ways of life. In no case may an indigenous people be deprived of their means of subsistence. It also includes the right to seek and obtain just, fair and mutually-agreed compensation, if they are so deprived.

[Paragraph 19. The right to seek and obtain from non-indigenous authorities the fulfilment of their responsibilities or obligations related to the effective and continuing improvement of the economic and social conditions of, as well as the quality of life for, indigenous peoples, with their free, genuine consent and according to their own priorities.]

Paragraph 19 bis. The right to humanitarian assistance from States and national and international organizations. The latter shall ensure, in conjunction with the peoples concerned, that their assistance accrues to indigenous peoples' direct and full benefit.

Paragraph 20. The right to determine, plan and implement, in the context of their right of self-determination, all health, housing, and other social, cultural and economic measures affecting them, and execute such measures through their own institutions.

Paragraph 20 bis. The right to their own traditional medicines and health practices. This includes the right to protection of vital medicinal plants, animals, and minerals. The above may not be construed as a limitation to indigenous poeples' right of access to services provided by the non-indigenous health systems, if they so wish.

Paragraph 20 ter. The right to prevent the utilization of their lands and other territories or resources for all military purposes, and their utilization for the storage or disposal of radioactive, toxic, industrial or any other wastes. This includes the right to seek and obtain effective, fair, just and mutually-agreed compensation, and the restoration of the environment and the health of the people and individuals concerned, if said lands, territories or resources have been used without their free, genuine consent.

ANNEX II

COMMENTARY ON THE RECOMMENDED TEXT, ANNEX I

PREAMBLE

PP 1 Recommended.

PP 2 Recommended. Two participants raised their concern that individual indigenous peoples should be able to consider themselves different, and were not sure that the present text covered this. One participant wanted to ensure that asserting the individual's right to be different caused no ambiguity.

PP 3 Recommended. Some participants preferred an explicit mention of "social groups" in addition to the notion of peoples.

PP 4 Recommended. Two participants had some concerns about including the words "and other territories and resources traditionally occupied or othewise used by them".

PP 5 Recommended.

PP 6 Recommended.

PP 7 Recommended.

PP 8 Recommended. Although the word "adverse" is in brackets, there was general concern expressed about qualifying the concept of discrimination.

PP 9 Recommended. One participant expressed the necessity for indigenous peoples to be involved in decision-making processes on issues which affect them, and expressed a preference for the formulation of Preambular paragraph 7 as contained in document E/CN.4/Sub.2/1989/36.

PP 10 Recommended. Two participants expressed strong concerns about the possible negative effects of singling out women and children.

PP 11 Recommended. Two participants stated that they would not wish the words "the right freely to determine their present and future relationships with the political, economic and social life of States" to be construed as implying a right for indigenous peoples to secede.

PP 12 Recommended. One participant expressed concern about the paragraphs reference to self-determination.

PP 13 Recommended.

PP 14 Recommended.

PP 15 Recommended.

PART III

OP 11 bis Due to insufficient time for consideration, the group decided to submit both the text proposed by the Chairman and the alternative proposal by one participant, to the Plenary of the working group for its consideration:

["Paragraph 11 bis. The right effectively to secure full respect from non-indigenous parties, in all the latters' policies and actions relevant to indigenous rights, for the profound relationship of indigenous people with the lands and other territories and resources traditionally occupied or otherwise used by them. This right includes the recognition of the importance attached by indigenous peoples to their environmental integrity.";]

["Paragraph 11 bis. States have a duty to respect in all relevant policies and actions the profound relationship of indigenous peoples with their traditional territories, lands and resources and to ensure the recognition and maintenance of an adequate land and resource base for indigeous peoples, in conjunction with them."]

OP 12 Recommended. One participant expressed a preference for the formulation in document E/CN.4/Sub.2/1989/36, paragraph 12. Two participants expressed concern that the second sentence of the article appears to give indigenous peoples a right against expropriation not shared by other citizens of the State, and reserved their positions.

OP 12 bis Recommended.

OP 13 Recommended.

OP 14 Recommended. Two participants observed their positions on the entire paragraph.

OP 14 bis Recommended.

OP 15 Recommended. Two participants reserved their positions on the entire paragraph.

OP 16 Recommended.

OP 17 Recommended. One participant reserved its position because the provision appears to give indigenous peoples veto power over development projects. Another participant submitted the following text for addition to the paragraph:

"The law shall provide appropriate sanctions against any expropriation of the land of the interested peoples and the governments must impose sanctions to avoid such infractions."

There was no time to consider this proposal.

OP 18 Recommended.

OP 19 The group decided to put this paragraph in brackets, indicating the need for further consideration.

OP 19 bis Recommended.

OP 20 Recommended.

OP 20 bis Recommended.

OP 20 ter Recommended. One participant reserved his position.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/7/Add.1
30 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July - 3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the informal drafting groups established to consider the first revised text of the draft Universal Declaration on Indigenous Rights

Addendum

The present document contains the report and text adopted by the informal drafting group established to consider the provisions on political rights and autonomy contained in the preamble and Part V of the first revised text of the draft Universal Declaration on Indigenous Rights (Annex II, E/CN.4/Sub.2/1989/36).

GE.90-12542/7133A

REPORT BY DRAFTING GROUP II

INTRODUCTION

1. The Drafting Group held seven meetings from 23 to 27 July 1990. In accordance with the instructions given to the Group by the plenary meeting of the Working Group, it was incumbent to the deliberation and revision of Part V of the draft declaration and pertinent preambular paragraphs relating to political rights.

ELECTION OF OFFICERS

2. At its first meeting, 23 July 1990, the Drafting Group elected Mr. Danilo Turk as Chairman/Rapporteur.

PARTICIPATION

3. The meetings of the Drafting Group, which were opened to all members of the Sub-Commission, were attended by the representatives of States, non-governmental organizations, non-governmental organizations of indigenous peoples as well as representatives of their national organizations and individuals.

DOCUMENTS

4. The Drafting Group had before it the following documents:

- The draft universal declaration on indigenous peoples presented by the Chairman/Rapporteur, Mrs. Erica-Irene Daes and contained in Annex II of document E/CN.4/Sub.2/1989/36;

- Analytical commentary to the draft declaration elaborated by Mrs. Erica-Irene Daes, E/CN.4/Sub.2/1990/39.

ORGANIZATION OF WORK

5. At the first meeting, on 23 July 1990, the Chairman/Rapporteur made a brief introductory statement referring to the history of the draft declaration and the work so far accomplished. He proposed, and the Group agreed, that the draft submitted by the Chairman/Rapporteur, Mrs. Erica-Irene Daes, should constitute the basis and framework for the Group's own deliberations. The meetings of small informal working groups were used to facilitate the drafting process.

6. Accordingly, the Group decided to work its way, article by article, through the draft submitted by the Chairman/Rapporteur, modifying and replacing particular provisions in the submitted text as might be necessary and to adopt agreed texts of the pertinent articles as the work proceeded. It was accepted that, when the whole text had been covered in this way, further consideration would have to be given to the placement of articles considered.

CONSIDERATION AND DRAFTING OF PARAGRAPHS

7. In the light of these decisions on its working methods, the Drafting Group embarked on its examination, revision and deliberation as necessary of the draft paragraphs submitted by the Chairman/Rapporteur.

8. At its 1st to 7th meetings from 23 to 27 July 1990, the Group considered and adopted four preambular paragraphs and paragraph 1 and paragraphs 21-27 of the operative part.

9. The text of these paragraphs adopted by the Group is set out in the annex to the present report.

10. This text was the result of a wide-ranging discussion and reflects a number of alternative proposals advanced by the participants. It represents a reflection of those ideas which attracted the widest expression of support, and in most if not all cases, no strong expression of opposition. The paragraphs thus formulated are transmitted to the plenary and to the Chairman/Rapporteur and are, as such, understood to be subject to further refinement, with a view to achieving consistency, balance, and clarity for the draft declaration as a whole.

ANNEX

TEXT OF PARAGRAPHS PROVISIONALLY ADOPTED BY DRAFTING GROUP II

PREAMBLE

Preambular paragraph 1

Considering indigenous peoples equal to all others in dignity and rights, while recognizing the right of all peoples and individuals to be different, to consider themselves different, and to be respected as such.

Preambular paragraph 10.

Bearing in mind that nothing in this declaration may be used as a justification for denying to any indigenous peoples their right to self-determination.

New preambular paragraphs adopted without prejudice to their placement.

Considering the treaties and agreements with indigenous peoples continue to be matters of international concern and responsibility.

Noting that the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights affirm the fundamental importance of the right to self-determination, as well as the right of all human beings to pursue the material, cultural, and spiritual development in conditions of freedom and dignity.

PART I

Paragraph 1

Indigenous peoples have the right to self-determination, by virtue of which they may freely determine their political status, pursue their own economic, social, religious and cultural development, and determine their own institutions.

PART V

Paragraph 21

(a) The right to have their distinct political, social, cultural and economic characteristics duly reflected in the institutions of the government under which they live.

(b) The right to full recognition and proper regard to indigenous laws, customs and practices in the legal systems and political institutions of the State.

(c) The right of members of indigenous peoples to participate fully and without adverse discrimination in the political, economic and social life of the State. The exercise of this right shall in no way adversely affect the collective rights of the peoples concerned.

Paragraph 22

(a) The right to participate effectively at the State and international levels, through representatives freely selected by themselves and by means of their own choosing, in policy and decision-making and in implementation in all matters which they consider may affect their rights, lives, and futures.

(b) The right of indigenous peoples to be involved, through appropriate procedures, determined in conjunction with them, in devising any laws or administrative measures that may affect them directly, and to obtain their free and informed consent through implementing such measures. States have the duty to guarantee the full exercise of these rights.

Paragraph 23

(a) The right to determine, without interference, on matters pertaining to their own affairs, including, inter alia, control over lands and resources, social and political relations, dispute resolution, criminal jurisdiction, environmental protection and managements, economic activities, education, culture, traditional religious practices, health, taxation and entry by non-members.

(b) The right of indigenous peoples concerned to determine the nature and structures of their institutions and to select the membership of such institutions according to their own procedures. The duty of States, where the peoples concerned so desire, to recognize such institutions and their membership through the legal systems and political institutions of the State.

Paragraph 24

The right to determine their own membership. The duty of States to accept that determination.

Paragraph 25

The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

Paragraph 26

The right of indigenous peoples divided by international borders to maintain and develop relations and commerce including unrestricted travel for cultural, social, sporting, religious and traditional economic purposes, across State borders. The duty of States to adopt measures, in conjunction with indigenous peoples, to facilitate the exercise of this right.

Paragraph 27

The duty of States to honour and to implement treaties and other agreements concluded with indigenous peoples according to their original intent, pursuant to the principle of pacta sunt servanda.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1990/7/Add.2
30 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Eighth session
23 July-3 August 1990

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Report of the informal drafting groups established to consider the first revised text of the draft Universal Declaration on Indigenous Rights

Addendum

The present document contains the report and text adopted by the informal drafting group established to consider the provisions in the preamble and Parts I, II, VI and VII of the first revised text of the draft Universal Declaration on Indigenous Rights (Annex II, E/CN.4/Sub.2/1989/36).

GE.90-12538/4072a

REPORT BY DRAFTING GROUP III

Chair: Ms. Erica-Irene A. Daes

INTRODUCTION

According to a proposal made by the Chairman/Rapporteur, during its eighth session, the Working Group on Indigenous Populations decided to institute three drafting groups in the first week of its meeting with the basic aim to accelerate the work on the draft Universal Declaration and with the wish to adopt some of the principles of the draft Declaration, including the principles contained in the Preamble. Subsequently three drafting groups were established on 23 July 1990.

DRAFTING GROUP III

Drafting Group III dealt with the examination of the principles contained in Parts I, II, VI and VII of the draft Declaration as well as a great number of the provisions contained in the Preamble. In the reporting period the Drafting Group had five meetings, unfortunately without translation facilities.

During the first session the Chairman introduced the principles of the Declaration and drew the attention of the participants to documents E/CN.4/Sub.2/1989/36 and E/CN.4/Sub.2/1990/39 which would be the basic documentation for the consideration of the above-mentioned principles. She clarified to the participants that everyone was free to submit, orally or in writing, any amendments which might improve, supplement or correct the existing text of the first revised text of the draft Declaration. She requested all participants to attend the meetings most attentively as to be able to accomplish as much as possible the work of Drafting Group III. She also expressed the view that only those principles on which full consensus and agreement would be reached should appear in the present report of the Drafting Group. After an exchange of views with the participants - both Government observers and representatives of Indigenous peoples' organizations - the consideration of the above-mentioned principles started, in the form of a constructive dialogue which took place in an open and co-operative atmosphere.

A number of relevant amendments was submitted by the Government observers as well as by representatives of the indigenous peoples, which after thorough discussion have been incorporated in the relevant principles, including two new preambular paragraphs as well as one new article.

A total of 12 preambular principles as well as 15 articles were adopted by Working Group III which can be found in Annex I to this report.

The report of this Drafting Group will be presented to the plenary of the Working Group and will be annexed to the annual report of the Working Group.

Second reading of the draft principles contained in the first revised text of the draft Universal Declaration on Indigenous Rights, as presented by the Chairman/Rapporteur, Ms. Erica-Irene Daes, in document E/CN.4/Sub.2/1989/36

The General Assembly,

Considering indigenous peoples born free and equal in dignity and rights in accordance with international standards while recognizing the right of all individuals and groups to be different, to consider themselves different and to be respected as such,

Considering that all peoples and human groups have contributed to the progress of civilizations and cultures which constitute the common heritage of humankind,

Recognizing the specific need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions, culture and laws and political, social and economic institutions, all of which arise from the lands which the indigenous peoples have traditionally occupied,

Convinced that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,

Reaffirming that indigenous peoples in the exercise of their rights should be free from adverse distinction or adverse discrimination of any kind,

Endorsing calls for the consolidation and strengthening of indigenous societies and their cultures and traditions through control over development affecting them and their territories based on their own needs and value systems and comprehensive participation in all other relevant development activities within and among States,

Emphasizing the need for special attention to the rights and skills of indigenous women, youth and children,

Recognizing in particular that it is in the best interest of indigenous children for the child's indigenous community to retain, wherever possible, common responsibility for the upbringing and development of the child,

Emphasizing that this Declaration [takes into account] the rights of individuals and communities as guaranteed in all other international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination,

Calling on States to comply with and effectively implement all international instruments as they apply to indigenous peoples and in conjunction with them,

Acknowledging the need for minimum standards taking account of the diverse realities and aspirations of indigenous peoples in all parts of the world,

Solemnly proclaims the following Declaration on rights of indigenous peoples and calls upon all States to take prompt and effective measures to implement the Declaration in conjunction with the indigenous peoples.

PART I

1. The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in international human rights instruments.

2. The right to be free and equal to all the other human beings, human groups and peoples in dignity and rights and to be free from adverse distinction or adverse discrimination of any kind.

PART II

3. The collective right to exist as distinct peoples and to be protected against genocide, as well as the individual rights to life, physical and mental integrity, liberty and security of person.

4. The collective and individual right to maintain and develop their ethnic and cultural characteristics and identities, including the rights of peoples and individuals to respect for their self-identification. This right includes also the right of each indigenous people to pursue its own cultural, political and economical development.

5. The individual and collective right to protection against ethnocide and cultural genocide. This protection shall include, in particular, prevention of and appropriate redress for:

(a) any act which has the aim or effect of depriving them of the integrity of their distinct societies;

(b) any form of forced or involuntary assimilation or integration;

(c) dispossession of territories, lands or resources;

(d) imposition of alien cultures or ways of life; or

(e) any propaganda or information directed against them.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development, including the right to control and maintain the manifestations of their cultures, such as archaeological and historical sites and structures, artefacts, designs, technology and works of art and the right to the restoration of cultural property taken without their consent. In addition the artistic and technological creations of indigenous individuals shall be recognized and respected as cultural property.

7. Indigenous peoples have the right to require that States grant the necessary assistance and States have a duty, within the resources available, to make available to indigenous peoples, opportunities and resources for the full development of their own institutions and initiatives for full enjoyment of the human rights and fundamental freedoms referred to in this Declaration.

8. The right to manifest, teach, practise and observe their own spiritual traditions, customs and ceremonies, to maintain, protect and have access in privacy to sacred sites, ceremonial implements, natural materials and burial grounds for these purposes, and the right to the repatriation of human remains.

9. The right to develop, promote, maintain and transmit to future generations their own languages and written literacy and to use them for administrative, juridical, cultural and other purposes. Measures shall be taken to ensure that indigenous peoples can understand and be understood in legal and administrative proceedings where necessary through the provision of interpretation or by other effective means.

10. The right to all forms of education, including in particular the right to have access to education in their own languages, and with respect for their own cultural traditions and heritage, and to establish, structure, conduct and control their own educational systems and institutions. Appropriate resources shall be provided for this purpose and minimum standards established by the competent authority in agreement with indigenous peoples.

11. The right to promote inter-cultural information and education, recognizing the dignity and diversity of their cultures, history and aspirations, in particular through the mass media, and the duty of States to take the necessary measures among the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

PART VI

28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes between States and indigenous peoples, groups or individuals and to an effective remedy for any infringement, public or private. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and competent international, regional and domestic human rights review and complaints mechanisms.

29. States have a duty, in conjunction with the indigenous peoples concerned, to take prompt and effective measures to ensure the full enjoyment of the exercise of the indigenous rights and other human rights and fundamental freedoms referred to in this Declaration.

PART VII

30. These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world.

31. Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.